

G46EKIS1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 SEMYON (SAM) KISLIN,

4 Plaintiff,

5 v.

14 CV 237(PGG)

6 SIMON DIKKER,

7 Defendant.

8 -----x

9 April 6, 2016

10 10:29 a.m.

11 Before:

12 HON. PAUL G. GARDEPHE,

13 District Judge

14 APPEARANCES

15 KESTENBAUM, DANNENBERG & KLEIN, LLP

16 Attorneys for Plaintiff

17 BY: JEFFREY CRAIG DANNENBERG

18 ALEXANDER BERKOVICH, ESQ

19 Attorney for Defendant

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Dikker - cross

1 (In open court)

2 THE COURT: All right. Mr. Dikker should retake the
3 stand.

4 You can be seated, Mr. Dikker. Mr. Dikker, you remain
5 under oath.

6 Please proceed.

7 MR. DANNENBERG: Your Honor, I'm just going to place
8 the documents up here that I may need to refer to.

9 THE COURT: All right.

10 SIMON DIKKER, resumed.

11 CROSS EXAMINATION

12 BY MR. DANNENBERG:

13 Q. Good morning, Mr. Dikker.

14 A. Good morning.

15 Q. Yesterday in some of the questions and answers there was a
16 reference to the real estate fund Solid-Podmoskovny. Do you
17 remember that?

18 A. Yes.

19 Q. Is that the same as the name Solid Moscow Region?

20 A. Yes.

21 Q. Podmoskovny is a Russian word that means "Moscow region,"
22 correct?

23 A. Yes, that's correct.

24 Q. So someone might call that real estate fund that we were
25 discussing yesterday Solid-Podmoskovny or Solid Moscow region,

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1 but they would be referring to the same entity, correct?

2 A. Yes, that's the same thing.

3 Q. But in your declaration, Defendant's Exhibit F, you use
4 those two names interchangeably, without explaining that you
5 were referring to the same entity. I'll give you an example.

6 At the end of the last sentence of paragraph one, you
7 refer to, quote, a Russian real estate fund, Solid-Podmoskovny,
8 closed quote. And in the beginning of the first sentence of
9 paragraph two, you refer to, quote, the real estate fund Solid
10 Moscow Region, closed quote.

11 Do you see that?

12 A. Yes.

13 Q. Do you understand why your failure to use the same name to
14 explain that these two names refer to the same entity could be
15 confusing to someone reading your declaration?

16 A. Yes, I understand that.

17 Q. And yesterday I asked you whether the Solid-Podmoskovny
18 fund had been created specifically for the buyout transaction
19 involving Mr. Kislin's TRI shares. Do you remember that?

20 A. Yes, I remember.

21 Q. And did I understand your testimony yesterday correctly
22 that Solid-Podmoskovny was the only fund in which TRI had
23 invested at that time, at the time of Mr. Kislin's buyout, and
24 that the creation of that fund actually had nothing to do with
25 the buyout of Mr. Kislin's shares?

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Dikker - cross

1 THE COURT: That's compound.

2 MR. BERKOVICH: Object to the form.

3 THE COURT: That's compound. It's two questions.

4 Q. Is it true that Solid-Podmoskovny was created specifically
5 for the purposes of Mr. Kislin's buyout transaction?

6 A. Yes.

7 Q. Isn't it true that you formed the company Lentesco, Ltd., a
8 Cyprus corporation, specifically as a depository or holder of
9 TRI's shares in Solid-Podmoskovny?

10 A. Yes. That was the initial rationale for that, only for the
11 shares of Solid-Podmoskovny.

12 Q. So because Solid-Podmoskovny was created for the Kislin
13 buyout transaction, the registry of those TRI shares in the
14 name of Lentesco was also for the purposes of the Kislin buyout
15 transaction, correct?

16 A. At that time, yes.

17 Q. Now, beginning in 2007 and ending in 2008, Mr. Kislin and
18 you engaged in discussions for a buyout of Mr. Kislin's
19 ownership interests in TRI; isn't that true?

20 A. What time specifically did you mention, those years?

21 Q. Sorry. Beginning in 2007 and ending in 2008.

22 A. Yes, we did.

23 Q. And isn't it also true that following negotiations over the
24 value of that interest, Mr. Kislin's shares, Mr. Kislin and you
25 ultimately settled on a figure of \$20 million?

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1 A. Kislin and I did not come to an agreement on a specific
2 amount.

3 Q. I'm going to read to you from the first two sentences of
4 paragraph E, Section 8 of the stipulated facts in the pretrial
5 order. You don't have it in front of you. I'm just going to
6 read it to you because these are facts that have been admitted
7 by both sides.

8 Following negotiation over the value of that interest,
9 Kislin and Dikker ultimately settled on a figure of
10 \$20 million.

11 Does that refresh your recollection, sir, that
12 following negotiations over the valuation of Mr. Kislin's
13 interest, you and Mr. Kislin ultimately settled on a figure of
14 \$20 million?

15 A. I did not buy the company. I did not buy the shares. I
16 was only looking for a buyer for those shares and, yes, we were
17 looking for a buyer for shares for the amount of 20 million or
18 more.

19 Q. That doesn't answer my question, with all due respect. My
20 question is: Isn't it true that following the negotiations of
21 the valuation of Mr. Kislin's interests, you and he ultimately
22 settled on a figure of \$20 million?

23 A. Preliminarily, yes.

24 Q. And isn't it also true that Mr. Kislin and you agreed that
25 the \$20 million sum would be paid through TRI's sale of

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Dikker - cross

1 interest that TRI owned in a Russian real estate fund known as
2 Solid; in other words, Solid-Podmoskovny?

3 A. That's not completely correct, because TRI did not own
4 those shares. The shares were actually owned by Lentesco. But
5 there was an agreement that Mr. Kislin's share or interest in
6 Solid-Podmoskovny would be sold.

7 Q. Mr. Kislin did not own any share of Solid-Podmoskovny, did
8 he?

9 A. No, he did not own the shares of Solid-Podmoskovny.

10 Q. Prior to this transaction, didn't he own 51 percent of the
11 shares of TRI, and TRI owned 100 percent of the shares of
12 Solid-Podmoskovny, correct?

13 A. In principle, yes. Nominally, no, because nominally the
14 shares of Solid-Podmoskovny were held in the name of Lentesco,
15 which was under the complete control of the company, TRI.

16 Q. Okay. So I'll ask you again, that being the case: Isn't
17 it true that Mr. Kislin and you agreed that the \$20 million sum
18 would be paid through the TRI sale through its nominee,
19 Lentesco, of an interest that TRI owned in a Russian real
20 estate fund known as Solid-Podmoskovny?

21 A. I guess you can say it that way.

22 Q. Now, the buyout of Mr. Kislin's shares in the amount of
23 \$20 million was agreed to be effected through the sale to
24 Blagosostoyaniye?

25 THE COURT: Again, I don't want questions that don't

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1 make it clear who is agreeing to what. I tried to communicate
2 yesterday, those types of questions are not useful to me
3 because I have no idea who you're talking about. So when you
4 say it was agreed as a formulation, it's not useful to me. I
5 don't want that formulation used.

6 MR. DANNENBERG: Understood.

7 THE COURT: Any agreement you want to ask about begins
8 with questions about who the agreement is between, and then we
9 take it from there.

10 BY MR. DANNENBERG:

11 Q. The buyout of Mr. Kislin's shares in the amount of
12 \$20 million was understood by you to be -- that it would be
13 effected or effectuated through the sale to Blagosostoyaniye of
14 the shares held by TRI through Lentesco in the
15 Solid-Podmoskovny fund, correct?

16 A. With one correction.

17 Q. Correct it.

18 A. Blagosostoyaniye also didn't buy the shares directly; not
19 in its own name, but its own Cyprus subsidiary. I don't recall
20 the name.

21 Q. So let me ask it with that correction to make sure that I
22 understand what you're willing to concede.

23 The buyout of Mr. Kislin's shares in the amount of
24 \$20 million was understood by you to be effectuated through the
25 sale to Blagosostoyaniye's Cyprus subsidiary of the shares held

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1 by TRI through Lentesco in Solid-Podmoskovny?

2 A. Yes.

3 Q. So the \$20 million that you and Mr. Kislin agreed to for
4 the buyout of his TRI shares was supposed to be financed
5 through the sale of TRI's Solid-Podmoskovny shares to
6 Blagosostoyaniye's subsidiary for \$20 million; isn't that
7 correct?

8 A. Could you repeat that, please.

9 Q. The \$20 million that you and Mr. Kislin agreed to for the
10 buyout of his TRI shares was supposed to be financed through
11 the sale of TRI's Solid-Podmoskovny shares to
12 Blagosostoyaniye's Cyprus subsidiary for \$20 million; isn't
13 that correct?

14 A. You can probably say it that way. Yes.

15 Q. And isn't it also true that at some point Mr. Kislin,
16 either directly or through a company that he controlled,
17 received at least \$16 million out of that \$20 million buyout
18 price?

19 A. I think so, yes.

20 THE COURT: How do you know that Kislin received
21 \$16 million?

22 THE WITNESS: From Sachkov and Kislin's own words.

23 MR. DANNENBERG: I'll also point out, your Honor, that
24 it's one of the stipulated facts which I just quoted from in
25 the question, paragraph 8F.

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1 THE COURT: I'm aware of that, sir. I just want to
2 know the source of the information. That's all. And the
3 stipulation doesn't identify the source of the information.
4 That's why I asked.

5 BY MR. DANNENBERG:

6 Q. Is it your understanding, Mr. Dikker, that the company
7 through which Mr. Kislin received that sum of at least
8 \$16 million was his Cyprus company, Kominelli?

9 A. As far as I know, but I was not involved in the
10 transaction. I wasn't involved in the transaction itself.

11 Q. And is it also your understanding that the sum of at least
12 \$16 million that was received by Kominelli was paid by
13 Blagosostoyaniye, either directly or through its subsidiary?

14 A. As far as I understand, it was through the subsidiary.

15 Q. And as far as you are aware, Blagosostoyaniye's subsidiary
16 paid the full amount of \$20 million that it had agreed to pay
17 and received the full amount of the Solid-Podmoskovny shares
18 that it was supposed to receive? Isn't that correct?

19 THE COURT: Again, I don't know what as far as you
20 know means. So you're welcome to explore what he knows, but a
21 question that is framed "as far as you know" is not helpful to
22 me, because I don't know how he knows. And it's important that
23 I know how he knows.

24 MR. DANNENBERG: Understood.

25 Q. Isn't it your understanding, Mr. Dikker, that

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1 Blagosostoyaniye, either directly or through its subsidiary,
2 paid the full amount of \$20 million that it had agreed to pay
3 and received the full amount of Solid-Podmoskovny shares that
4 it was supposed to receive? Is that your understanding?

5 A. The fact that the full amount of the shares was received by
6 the subsidiary of Blago in Cyprus, that, I know for certain. I
7 checked that with the registration office. How much money was
8 transferred to Lentesco, how much money was paid by the
9 subsidiary of Blagosostoyaniye, again, that, I only know from
10 the words of Sachkov and Kislin and Demidov.

11 Q. Demidov was the principal of Blagosostoyaniye?

12 A. At the time he was the vice president.

13 Q. And is it your understanding from any source -- and I'll
14 ask you where this understanding came from -- that
15 Blagosostoyaniye paid out to some entity or entities the full
16 \$20 million that it had agreed to pay for the TRI shares in
17 Solid-Podmoskovny?

18 A. The full amount of what?

19 Q. Twenty million dollars.

20 A. I don't know.

21 Q. You have your declaration in front of you, which is
22 Defendant's Exhibit F. You say in paragraph 32 of that
23 declaration, quote, by acquiring the shares -- and you had
24 earlier defined the shares as shares of Solid-Podmoskovny --
25 Blagosostoyaniye has stepped into Kislin's shoes and became

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1 51 percent owner of Solid-Podmoskovny.

2 Do you see that?

3 A. Yes.

4 Q. Again, that's not true, is it? Mr. Kislin never owned
5 51 percent of Solid-Podmoskovny, did he?

6 A. Mr. Kislin was a 51 percent owner of the company, TRI,
7 which controlled 100 percent of the shares of Solid-Podmoskovny
8 through the company Lentesco. And as a result of that, through
9 the transaction Blago received the 51 percent of that.

10 Q. So am I correct that when you used the term "stepped into
11 Kislin's shoes" in paragraph 32 of your declaration, you were
12 referring to the fact that Mr. Kislin had given up 51 percent
13 of his ownership of TRI and Blagosostoyaniye had acquired
14 51 percent of the ownership of Solid-Podmoskovny?

15 A. No. They purchased the shares of Blagosostoyaniye --
16 sorry, Blagosostoyaniye purchased the shares of
17 Solid-Podmoskovny directly. They never purchased shares of
18 TRI.

19 Q. Let me ask it this way: What did you mean in paragraph 32
20 of your declaration by the phrase "stepped into Kislin's
21 shoes"?

22 A. Only with regards to the shares of the fund Solid Moscow
23 region.

24 Q. Solid-Podmoskovny?

25 A. Yes. The same.

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Dikker - cross

1 Q. Refer to paragraph two of your declaration. You say that
2 the reason why only at least \$16 million was transferred to
3 Kominelli rather than the full amount of 20 million was because
4 Mr. Semernin intervened. Do you remember saying that in
5 paragraph two of your declaration?

6 A. The second paragraph doesn't say anything about
7 \$16 million.

8 Q. I wasn't suggesting. I was quoting from the agreement.
9 Let me just ask it straight out.

10 Is the reason why only \$16 million was transferred to
11 Kominelli rather than the full amount of \$20 million that had
12 been agreed to for the Kislin buyout was because Mr. Semernin
13 intervened?

14 A. I would say it that way. Not the full amount was
15 transferred; four million less than had been agreed to.

16 Q. And the reason why it was 4 million less was because
17 Mr. Semernin intervened, correct?

18 A. Clarification. The \$4 million less than agreed upon. I
19 didn't say we agreed to, they agreed to. So \$4 million less
20 than the agreed-upon amount.

21 Q. The reason why the amount that Kominelli received --

22 THE COURT: I'm going to ask a question.

23 How do you know that \$4 million of the \$20 million was
24 withheld? How do you know that?

25 THE WITNESS: I don't know what the overall amount

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Dikker - cross

1 was, whether it was 20 million or 30 million or what it was.

2 But the conversation, the discussion that \$4 million is going
3 to be deducted, I was involved in that conversation with
4 Mr. Kislin, Mr. Semernin and Mr. Demidov.

5 Q. You know that the amount was \$20 million. You said it in
6 the last sentence of your paragraph one of your declaration,
7 didn't you?

8 A. Yes, I know that information from Kislin and Sachkov, from
9 their own words. I didn't see the transaction itself. That
10 didn't go through any of the accounts that I have control over.
11 Again, I know about the \$20 million from the words of Kislin
12 and Sachkov, that that was the amount that had gone through.
13 And I've known that from them since 2008.

14 Q. It wasn't a coincidence that Blagosostoyaniye agreed to pay
15 \$20 million for those Solid-Podmoskovny shares, was it?

16 A. Of course that I understand it wasn't a coincidence.
17 Sachkov and I had worked on that for half a year. I just don't
18 know -- I did not see the final amount that was involved in the
19 transaction that went through the accounts for the transaction.
20 That did not go through any of the accounts that I had control
21 over. What I know is -- for certain is that \$4 million were
22 withheld from the amount that was transferred by the company
23 controlled by Blago to the company that was controlled by
24 Solid-Podmoskovny.

25 Pardon, clarification. The company was called Solid

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Dikker - cross

1 Management, which was under the control of Semernin, and which
2 was the managing company of our first TRI fund

3 Q. And was it withheld from -- that \$4 million wasn't withheld
4 from Solid-Podmoskovny; it was withheld from Kominelli,
5 correct?

6 A. That, I don't know. I don't know how it was effectively
7 done, how technically it was done.

8 Q. Now, if I understood a portion of your last answer,
9 Mr. Semernin was on the board at the management company that
10 controlled Solid-Podmoskovny, correct?

11 A. Yes. Not only was he on the board of directors; he is
12 also -- owned at least 51 percent of the shares of that company
13 at that time.

14 Q. Of what company?

15 A. The one that managed the shares of Solid-Podmoskovny.

16 Q. And in that position that Mr. Semernin held, was it your
17 understanding that his approval would be required for the sale
18 of TRI's Solid-Podmoskovny shares to Blagosostoyaniye?

19 A. Yes. It was a large transaction and had to be approved by
20 everyone.

21 Q. And you say in paragraphs 2 and 31 of your declaration that
22 Mr. Semernin refused to give that approval to the sale of TRI's
23 Solid-Podmoskovny shares to Blagosostoyaniye unless either he
24 or some company that he controlled received about \$4 million to
25 cover what you were calling previous and future obligations.

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Dikker - cross

1 Do you remember that?

2 MR. BERKOVICH: Objection to form.

3 THE COURT: What's the basis for your objection?

4 MR. BERKOVICH: It appears to me that the implication
5 of the question is that somehow there was a payment to be made
6 to Mr. Semernin personally. And there is no basis in anything
7 cited by Mr. Dannenberg to say that, other than paid to the
8 Semernin's company, which is Solid Management, the management
9 company.

10 THE COURT: All right. Can you amend it to refer to
11 his company?

12 Q. You say in paragraphs 2 and 31 of your declaration that
13 Mr. Semernin refused to give his approval to the sale of the
14 TRI shares to Blagosostoyaniye unless he or some company that
15 he controlled received about \$4 million to cover what you
16 called previous and future obligations. Is that correct?

17 MR. BERKOVICH: Same objection, your Honor.

18 THE COURT: That's not what it says. The objection is
19 sustained.

20 31 refers to the board of the real estate fund.
21 That's what it says. So if you're going to ask him about that
22 paragraph, that's the language you're going to refer to, which
23 is the basis for his objection. And the objection is
24 sustained.

25 MR. DANNENBERG: Understood.

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Dikker - cross

1 BY MR. DANNENBERG:

2 Q. Is it your understanding, Mr. Dikker, that the board of the
3 Solid-Podmoskovny fund refused to give approval to the sale of
4 Mr. Kislin's -- I'm sorry, of TRI's shares in Solid-Podmoskovny
5 to Blagosostoyaniye unless either Mr. Semernin or some company
6 that he was affiliated with received about \$4 million to cover
7 previous and future obligations?

8 MR. BERKOVICH: Same objection, your Honor. There's
9 an implication that somehow Mr. Semernin would be receiving the
10 funds.

11 MR. DANNENBERG: I just asked if that's an
12 understanding.

13 THE COURT: I'll overrule that objection.

14 You may answer the question.

15 A. Yes, with two small corrections. First of all, not to
16 Mr. Semernin but to the company that had previously managed our
17 fund. And also -- our first fund, who had managed our first
18 fund.

19 And also, secondly, it wasn't the board of directors
20 of Solid-Podmoskovny but of the Solid Management company.

21 Q. Okay. But you do know that Mr. Semernin himself threatened
22 to block the transaction for the buyout of Mr. Kislin's TRI
23 shares and the transfer of TRI's Solid-Podmoskovny shares
24 unless he, Semernin, got paid \$4 million? Isn't that true?

25 A. I don't -- there was never any conversation about him

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Dikker - cross

1 personally receiving it.

2 THE COURT: What was the name of the -- you said that
3 the money that Semernin wanted would go to the company that
4 managed the first fund. What's the first fund?

5 THE WITNESS: The name of the fund I remember, the
6 name of the fund was Boyarkino Invest. Unfortunately I don't
7 recall the name of the management company. A lot of the names
8 are so similar to each other that I don't recall.

9 THE COURT: And who owned that Boyarkino Invest fund?

10 THE WITNESS: Boyarkino Invest was the first fund
11 created by the company, TRI, which was created by the
12 management or organized by the management company of Semernin.
13 Sachkov was the administrator. And they're also the ones who
14 found a buyer for the shares, under the requirements not only
15 of TRI -- I'm sorry, the assurance not only of TRI, but he also
16 requested personal guarantee from myself and from Sam, personal
17 guarantees from myself and Sam that we were going to continue
18 to pay a high interest, rather high dividends every year,
19 14 percent. That is that document that Sam referred to
20 yesterday when he talked about the document from 2005.

21 Starting in the second half of 2006, for a series of
22 reasons we could no longer pay those dividends. So Semernin
23 used the opportunity when his approval was required for the
24 sale of Solid-Podmoskovny. And he demanded that all of the
25 unpaid dividends for the previous fund, the previous

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Dikker - cross

1 transaction, be paid out, as well as the payment of dividends a
2 year and -- for the following year. That's how the amount
3 \$4 million came about.

4 THE COURT: You said that Semernin and Sachkov found a
5 buyer for shares. Was the shares in the Boyarkino Invest fund?

6 THE WITNESS: Yes, that's absolutely correct.

7 THE COURT: And as a result of them finding the buyer,
8 did TRI have an obligation to Semernin and Sachkov?

9 THE WITNESS: In reality it wasn't to Semernin and
10 Sachkov. It was to the buyer who was buying the shares. But
11 everything passed through the management company.

12 THE COURT: And is that where the obligation arose to
13 pay the 14 percent dividend?

14 THE WITNESS: It wasn't because of that, but it was
15 because it was the first time we were selling the shares. And
16 we agreed to a percentage that was too high. Sorry, we agreed
17 to a price for the shares that was too high. If we had
18 received an amount that was half of what we did, we could have
19 easily -- we could have easily paid out the 14 percent on that
20 amount. But because we received a fairly large sum for that
21 first fund, we couldn't. It was our business mistake.

22 THE COURT: All right, Mr. Dannenberg.

23 BY MR. DANNENBERG:

24 Q. Mr. Dikker, do you remember being deposed in my office,
25 attending a deposition in my office on June 26, 2015?

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Dikker - cross

1 A. Yes.

2 Q. And following the deposition I sent a transcript to your
3 attorney, Mr. Berkovich, so you'd have an opportunity to review
4 it sometime between then and now. Have you had an opportunity
5 to review it?

6 A. Yes, of course. I reviewed them.

7 Q. Do you remember being asked the following question and
8 giving the following answer?

9 THE COURT: Page?

10 MR. DANNENBERG: Page 88, line 22.

11 "Q The last thing you said, if I understood you correctly, was
12 that Mr. Semernin threatened to block this transaction that was
13 supposed to be used to fund the buyout of Mr. Kislin's TRI
14 shares unless he got paid \$4 million. Did I get that correct?

15 "A He didn't just say it. That was his condition."

16 Yes or no, Mr. Dikker: Do you remember being asked
17 that question and giving that answer?

18 A. Yes. Yes. Yes.

19 Q. Is it now your testimony that that answer was false?

20 A. No. I'm simply giving a fuller explanation.

21 MR. DANNENBERG: Your Honor, we've reached a point
22 where I think there was some considerable confusion
23 yesterday -- maybe there still is -- regarding these
24 transactions or transfers that were going on.

25 I've prepared a visual aid that I've marked as

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Dikker - cross

1 Plaintiff's Exhibit 12, just for identification. May I hand a
2 copy to the Court and to the witness --

3 THE COURT: Yes.

4 MR. DANNENBERG: -- so I can ask some questions?

5 THE COURT: Yes.

6 MR. BERKOVICH: Your Honor, I haven't had a chance to
7 review it.

8 MR. DANNENBERG: I submitted it last night.

9 I'm going to hand it -- I'm going to ask some
10 questions. It's just for identification. I'm not offering it
11 into evidence. I'm just using it to be able to illustrate
12 questions I'm trying to get answers to.

13 MR. BERKOVICH: No objection, your Honor.

14 BY MR. DANNENBERG:

15 Q. I prepared a list of six transactions, six transfers, that
16 I think came either from your testimony yesterday or from your
17 declaration, Plaintiff's Exhibit F. But I'd like to go through
18 each of them with you to make sure that I have my information
19 correct.

20 Transfer number one is from Brunlow -- Mr. Kislin --
21 to OptTorgLider -- that's your company -- and Interprogress --
22 that's Parilis's company -- for the transfer of 51 percent of
23 the TRI shares.

24 That's a transfer that really took place in 2008,
25 correct?

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1 A. That transaction absolutely -- transfer did happen, but
2 that wasn't the first transfer.

3 Q. Just bear with me. Let me ask the questions my own way,
4 all right, Mr. Dikker?

5 A. It's just that you said transfer number one. That's why I
6 was saying it.

7 Q. I'm not suggesting that these transfers happened in a
8 certain chronological order. It's just the way I listed them.
9 All right?

10 A. Okay.

11 Q. Transfer number two on my list was from OptTorgLider, your
12 company, and Interprogress, Parilis's company, to Brunlow,
13 Mr. Kislin, of what you called yesterday a nominal amount. Do
14 you remember that?

15 A. I got a little confused. So from the company OptTorgLider
16 and Interprogress to the Brunlow, correct?

17 Q. Yes.

18 A. Yes, that happened.

19 Q. Okay. And that really happened in 2008, too, right?

20 A. Yes.

21 Q. And, in fact, yesterday you mentioned that those transfers,
22 number one and two on my list, were pursuant to a written
23 agreement that you said was made between the transferring
24 parties back and forth, correct?

25 A. Yes, that's correct.

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Dikker - cross

1 Q. So there was a written agreement that nobody has produced
2 in this case that said, in effect, that in exchange for
3 Mr. Kislin through his company transferring 51 percent
4 ownership of TRI to you and Mr. Parilis through your companies,
5 you and Mr. Parilis would pay a nominal amount to Mr. Kislin
6 and his company?

7 A. Yes.

8 Q. Transfer number three on my list was from TRI through its
9 depository, Lentesco, to Kominelli of the Solid-Podmoskovny
10 shares. That's a transfer that you said yesterday took place
11 sometime in 2008 also, correct?

12 A. Not sometime in 2008. That was actually the first transfer
13 that took place. And I am 100 percent completely sure that
14 those shares were transferred to Kominelli. So in the
15 registration, the name of the holder of those shares was
16 changed from Lentesco to Kominelli. That, I'm 100 percent sure
17 of. That was the requirement from Sachkov in order to
18 facilitate the transfer of funds -- sorry, to execute the
19 transfer of funds.

20 Q. What transfer of funds?

21 A. The funds that Blagosostoyaniye was going to pay through
22 its company, to Kominelli.

23 THE COURT: And when did this happen, this transfer?

24 THE WITNESS: I can't tell you the exact date but it
25 was end of March, beginning of April, 2008.

G46EKIS1

Dikker - cross

1 I don't know if the shares were actually transferred
2 to Kominelli or whether Kominelli allowed the -- there's a
3 holding company, registration company -- whether those shares
4 were just held in its name at that registration company. That,
5 I don't know. But the fact that 51 percent of them were
6 transferred, were assigned to the name of Kominelli, that, I
7 can tell you for certain.

8 So in response to your question, yes, that transaction
9 did happen.

10 Q. That transaction, transfer number three on my list, was
11 that done pursuant to a written contract that you are
12 knowledgeable about?

13 A. This transaction was pursuant to a written agreement, but
14 it was a written agreement that was done in Cyprus, according
15 to their regulations. So it was a fairly simple page.

16 THE COURT: And who were the signatories to that
17 agreement?

18 THE WITNESS: I think on the part of Kominelli, the
19 signatory was Levkovsky. Who was the signatory from the other
20 side, I don't remember. It's a very simple agreement. Because
21 at the time in Cyprus, the shares of Russian real estate funds
22 could be transferred without taxation. It was a special
23 agreement, treaty between Cyprus and Russia about dual
24 taxation.

25 Q. Mr. Dikker, this written agreement that you just referred

G46EKIS1

Dikker - cross

1 to, I'm not asking who -- I don't think the judge was asking
2 who the signers were. Who were the parties to the agreement?

3 A. From our side, from the side of TRI, it was Lentesco. From
4 one side, one party was Lentesco. And the other side I think
5 it was Kominelli. The other party I believe was Kominelli.
6 Sachkov was the one who was organizing all of the agreements at
7 the time and receiving all of the documents. He was the one
8 who was signing everything.

9 Q. Now, in your previous answer, if I understood the
10 translation correctly, you said Levkovsky signed for Kominelli?
11 That's not true, is it?

12 A. It was -- Kominelli was the one at the time who signed -- I
13 don't remember if he was there, but if it was him, if he was
14 there, then he is the one who had the right to sign all the
15 documents at the time. I'm sorry. I meant not Kominelli; I
16 meant Lentesco, on behalf of Lentesco.

17 Q. Levkovsky was the financial director at TRI, right?

18 A. Nominally.

19 Q. So that's why he would sign for Lentesco, correct?

20 A. Yes. He was authorized to sign for TRI, Lentesco.

21 THE COURT: I want to make sure I understand exactly
22 what was provided by Lentesco to Kominelli.

23 MR. DANNENBERG: Can I clarify, your Honor.

24 THE COURT: Sure.

25 Q. In that written agreement, Lentesco -- correct me if I'm

G46EKIS1

Dikker - cross

1 wrong -- was agreeing to transfer the Solid-Podmoskovny shares
2 to Kominelli, yes?

3 A. I believe so. The Cypriot agreements are very simple. So
4 it would have been something like either selling the shares for
5 sum of, what, \$10 or something, or simply signing the shares
6 over.

7 Q. Well, you anticipated my next question, because --

8 THE COURT: I have a question.

9 So I still want to understand. I understand that
10 these are TRI shares in Solid-Podmoskovny. I understand that.
11 What is the relationship between that amount of shares and
12 Kislin's interest in TRI?

13 THE WITNESS: It was a direct one-to-one correlation.
14 51 percent of the shares of the fund Solid-Podmoskovny were
15 transferred to the company under the control of Kislin. I'll
16 explain why. If we had sold it from Kominelli, then the amount
17 of the funds would have had to be split equally between all the
18 shareholders; in other words -- or accordingly between all the
19 shareholders. In other words, Kislin would have received
20 51 percent of the sale, and then OptTorgLider and Interprogress
21 would have received the other 49 percent of the shares.

22 We decided to split the shares in order for Kislin to
23 receive the full hundred percent of the funds for the sale of
24 the shares.

25 MR. BERKOVICH: Your Honor, the witness again

G46EKIS1

Dikker - cross

1 misspoke. He was referring to Kominelli. I think he meant
2 Lentesco.

3 My understanding of this, as he did with the other
4 reference to Mr. Levkovsky, I think he's maybe a little tired
5 so he's using the wrong names. I mean, you can clarify that
6 with the witness.

7 THE COURT: Well, just for my purposes, what I'm
8 trying to understand, and I think this is correct, is that
9 Mr. Kislin's 51 percent interest in TRI is equivalent to the
10 shares of Solid-Podmoskovny that were transferred to Lentesco
11 and ultimately Kominelli. And that everyone agrees on that?

12 THE WITNESS: Yes, that's correct.

13 THE COURT: You agree with that, right,
14 Mr. Dannenberg?

15 MR. DANNENBERG: I believe I do, your Honor.

16 I think that it relates back -- I think the witness
17 actually put it in a way that I was more comfortable with
18 earlier, when he said that the transfer of the
19 Solid-Podmoskovny shares and the sale of Blagosostoyaniye was
20 used to finance the buyout of Mr. Kislin's shares.

21 THE COURT: That's a different issue. I'm just trying
22 to understand what those shares in Solid-Podmoskovny represent.
23 And I understand them to be equivalent to Mr. Kislin's
24 51 percent interest in TRI.

25 MR. DANNENBERG: You mean in value?

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Dikker - cross

1 THE COURT: Yes.

2 MR. DANNENBERG: Yes, I agree.

3 THE COURT: All right. Why don't we take a
4 five-minute break, okay?

5 (Recess)

6 THE COURT: Go ahead, Mr. Dannenberg.

7 BY MR. DANNENBERG:

8 Q. Where we left off, Mr. Dikker, was transfer number three.
9 And correct me if I'm wrong, but I think that you identified an
10 additional transfer that's not shown on my list here,
11 Plaintiff's Exhibit 12 for identification, which was a transfer
12 back from Kominelli to Lentesco of what you called a nominal
13 amount; I think you said \$10. Do you remember that?

14 A. I remember saying that, but I'm really not certain about
15 that. I don't know what the structure was of the transaction
16 between Lentesco and Kominelli or Lentesco and whatever company
17 Kominelli may have used. So I'm really not certain of the
18 mechanics of that transaction.

19 Q. Fair enough. But it is your understanding that the
20 consideration paid for the transfer of those Solid-Podmoskovny
21 shares shown in transfer number three was a nominal amount,
22 correct?

23 A. If there was any amount, it was a very small, nominal
24 amount.

25 Q. So I'll call that transfer 3.1, because it goes with

G46EKIS1

Dikker - cross

1 transfer number 3, okay? And transfers 3 and 3.1 were the ones
2 that were reflected in that written agreement that you
3 referenced just before the break, correct?

4 A. Yes.

5 Q. That was an agreement between Lentesco and Kominelli?

6 A. It was definitely Lentesco. Kominelli may have used
7 another registered holder instead of itself. So I'm not sure.
8 I think that was probably the case, because I don't think
9 Kominelli had the authorization to hold these shares. But I
10 know for certain that the shares were reregistered in the name
11 of Kominelli.

12 Q. So can we say that the agreement that we were just talking
13 about was between Lentesco and either Kominelli or some company
14 on its behalf?

15 A. Yes.

16 Q. And that agreement -- in other words, in effect, transfers
17 3 and 3.1 -- were done in order to facilitate the next transfer
18 on my list, number 4, the same Solid-Podmoskovny shares that
19 Kominelli had just received from Lentesco being transferred to
20 Blagosostoyaniye, correct?

21 A. Yes.

22 Q. So TRI's Solid-Podmoskovny shares were reregistered in the
23 name of Kominelli, or some company on its behalf, as transfer
24 number three; and then those shares were again reregistered in
25 the name of -- from the name of Kominelli, or some company on

G46EKIS1

Dikker - cross

1 its behalf, to Blagosostoyaniye, and that's transfer number
2 four?

3 A. Not completely. Again, it wasn't Blagosostoyaniye. It was
4 a company that was acting on behalf of Blagosostoyaniye. And
5 the second part is logically this transaction should have
6 occurred, but I was not involved in any way in the transaction
7 from this part on.

8 Q. But you refereed yesterday to having knowledge of a written
9 agreement between let's say Kominelli or some company acting on
10 its behalf and Blagosostoyaniye or some company acting on its
11 behalf?

12 A. Yes, there was.

13 Q. What is the basis of your understanding that there was such
14 a written agreement?

15 A. At one point Sachkov had to clarify something in that
16 agreement with me. I don't remember what exactly it was, but
17 he had checked something with me in that agreement. It was a
18 very simple agreement. It was a very simple agreement. And at
19 that time -- I don't remember what the amount in the agreement
20 was, but it wasn't the final amount. It wasn't the final
21 agreement for the transaction.

22 Q. The final agreement and the final amount was the
23 20 million, correct?

24 A. Again, I can't confirm anything about the final amount.
25 All I can say about that was from the words of other

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Dikker - cross

1 individuals. When we started negotiating, we had actually
2 started from 30 million, not even 20 million. And at one point
3 Sam said, this is not your money. You don't have to be
4 involved. And the only thing I was keeping an eye on was the
5 \$4 million that was supposed to go to Semernin. And even that
6 was really discussed later on without me, without my
7 participation. All of the details of these transactions, these
8 following transactions, were done without my participation.

9 Q. Well, Mr. Dikker, you acknowledged earlier today that the
10 purpose of the sale of the Podmoskovny shares to
11 Blagosostoyaniye was to finance the buyout of Mr. Kislin's TRI
12 shares. Do you remember that?

13 A. Yes, of course.

14 THE COURT: Who told you that the final amount was
15 \$20 million?

16 THE WITNESS: No one told me about the final amount of
17 \$20 million. The final amount I was told about was
18 \$16 million. The \$20 million was mentioned by Sam and by
19 Sachkov when they said that they had agreed to \$20 million.
20 And that was before Semernin got involved.

21 Q. You and Mr. Kislin were discussing --

22 THE COURT: Sorry. Who told you that the final amount
23 was 16 million?

24 THE WITNESS: Sachkov and Kislin.

25 THE COURT: Okay. Go ahead, Mr. Dannenberg.

G46EKIS1

Dikker - cross

1 Q. Sachkov and Kislin never told you the final amount was
2 16 million; they told you that the final amount that was paid
3 was 16 million. Isn't that true?

4 A. The amount paid out was 16 million. That's the final
5 amount.

6 Q. That's the final amount that was paid. But you know that
7 it wasn't the final amount that was agreed, because Mr. Kislin
8 was still demanding another \$4 million after that. Isn't that
9 true?

10 A. At the time that the transaction actually went through,
11 Mr. Kislin did not -- wasn't demanding anything. He spoke a
12 lot about that 4 million, but he's the one who personally
13 negotiated with Semernin, Sachkov and Demidov about how the
14 transaction was actually going to go through. I know that they
15 weren't able to resolve -- that they weren't able to negotiate
16 down with Semernin. Semernin started out by demanding 4
17 million and that's where it ended up. Sam started complaining
18 about his money once the transaction actually went through.
19 And that was literally the next day. He started complaining
20 about the \$4 million after the transaction went through.

21 Q. You're talking about whether Mr. Kislin had prior knowledge
22 of the fact that Semernin was going to grab that \$4 million,
23 right?

24 MR. BERKOVICH: Objection to form.

25 THE COURT: Sustained.

G46EKIS1

Dikker - cross

1 Q. In the answer you just gave, you were referring to the fact
2 that Mr. Kislin, to your knowledge, knew that Mr. Semernin was
3 going to get \$4 million out of the Blagosostoyaniye funds,
4 correct?

5 A. Of course he knew it. Absolutely. And he confirmed the
6 transaction.

7 Q. I'm saying, I accept the fact that you believe that to be
8 true, although you heard from him that he does not believe it
9 to be true. There's a dispute there. That's fine. I'm not
10 talking about that.

11 What I'm saying is that you and Mr. Kislin settled on
12 a buyout price for his TRI shares of \$20 million, correct?

13 A. I would like to repeat, that's not completely the case. I
14 was not buying a share from Kislin for \$20 million. I found a
15 buyer for him. And we brought a buyer to him for -- myself and
16 Sachkov brought him a buyer, who at that time agreed -- was
17 willing to pay him \$20 million.

18 Q. You didn't find a buyer for Mr. Kislin's shares of TRI;
19 you've already conceded in transfer number one that the --

20 THE COURT: Well, that's just an argument. So we're
21 not here for argument. We're here to ask questions and get
22 answers.

23 Q. Mr. Dikker, I'm reading to you from the second sentence of
24 paragraph E of Section 8 of the stipulated facts in this case
25 that both sides have agreed to: Following negotiation over the

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Dikker - cross

1 valuation of that interest, Dikker and Kislin ultimately
2 settled on a figure of \$20 million.

3 Does that refresh your recollection that you and
4 Mr. Kislin ultimately settled on a figure of \$20 million for
5 the buyout of the shares?

6 INTERPRETER: Sorry. Could you repeat what section, E
7 of paragraph?

8 MR. DANNENBERG: It's not in front of you. I'm
9 reading it word for word.

10 INTERPRETER: Could you repeat that, please.

11 MR. DANNENBERG: I'm reading to you from paragraph 8E
12 of the stipulated facts that both sides have agreed to: Quote,
13 following negotiation over the valuation of that interest,
14 Kislin and Dikker ultimately settled on a figure of
15 \$20 million, closed quote.

16 So is it fair to say that you and Mr. Kislin agreed
17 that the value of the shares of TRI that he was giving up was
18 \$20 million?

19 A. No, I don't agree.

20 Q. And isn't it also true that although transfer number one we
21 agreed shows that the actual acquirer of Mr. Kislin's
22 51 percent shares of TRI was you and Mr. Parilis through your
23 company, that transfer was going to be paid for through the
24 sale by TRI of the Solid-Podmoskovny shares to
25 Blagosostoyaniye?

G46EKIS1

Dikker - cross

1 A. I didn't understand the question.

2 Q. Am I correct -- withdrawn.

3 Isn't it true that in exchange for Mr. Kislin
4 transferring his TRI shares to you and Mr. Parilis through your
5 companies, he was expecting to get \$20 million?

6 THE COURT: Sustained.

7 Q. Isn't it true, Mr. Dikker, that in exchange for
8 Mr. Kislin's transfer of shares to you and Mr. Parilis through
9 your companies, you had agreed to get him \$20 million, although
10 that 20 million was not going to come from you?

11 A. No.

12 Q. The only way that you were going to be able to finance the
13 buyout of Mr. Kislin's 51 percent shares was by selling the
14 Solid-Podmoskovny shares to Blagosostoyaniye; isn't that true?

15 A. No.

16 Q. And, in fact, had you not sold those shares, had you not
17 entered into that buyout agreement with Mr. Kislin, there never
18 would have been any reason to have the sale of
19 Solid-Podmoskovny shares to Blagosostoyaniye?

20 A. This is so confusing. This is why I asked you to list
21 these transactions in chronological order.

22 This was the situation: Mr. Kislin, after receiving
23 \$16 million, came in the next day to the office. And only at
24 that point did he sign the agreement to transfer the 51 percent
25 of the TRI shares, which shows that at the time he was

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Dikker - cross

1 satisfied with that amount.

2 As soon as he sold us the TRI shares, that very same
3 day he started talking about the \$4 million. Yes, that's true.
4 That was a separate conversation that we were discussing and
5 agreeing to certain things. But that's how it happened
6 chronologically. First, he got the \$16 million, and then he
7 signed it.

8 Q. Well, you knew when he asked you for that \$4 million that
9 he was talking about the 4 million that Semernin had gotten out
10 of the Blagosostoyaniye money, correct?

11 MR. BERKOVICH: Objection to form, your Honor.

12 THE COURT: Wait. Sustained.

13 Q. Was it your understanding, Mr. Dikker, that when Mr. Kislin
14 was referring to that \$4 million the next day, he was talking
15 about the fact that he believed that he had gotten \$4 million
16 less than he thought he was entitled to out of the sale of his
17 TRI shares?

18 A. Yes. According to his words, he received \$4 million less
19 from the transaction than he had anticipated. But he had
20 confirmed the transaction of the \$16 million.

21 Q. You understood that he had already consented to Semernin's
22 getting \$4 million out of the Blagosostoyaniye money; that's
23 what you said, right?

24 A. That was the only way -- that was the only option he had.
25 Yes, he agreed to it.

G46EKIS1

Dikker - cross

1 Q. But you also understood that he wasn't relinquishing his
2 right to get the balance of the 20 million -- in other words,
3 that \$4 million -- ultimately for the sale of his TRI shares,
4 correct?

5 A. I don't know that.

6 Q. And, in fact, you understood that that's why the very next
7 day Mr. Kislin was saying, I'm still owed \$4 million, isn't
8 that right?

9 A. No, that's not correct.

10 Q. All right. Let me go back to my list here, Plaintiff's
11 Exhibit 12 for identification.

12 You said there was a written agreement that reflected
13 transfers 1 and 2. You said that there was a written agreement
14 that reflected transfers 3 and what we've identified as 3.1.
15 However, we don't have a copy of that written agreement, and
16 you haven't produced it at trial, have you?

17 A. Yes, that's correct.

18 Q. And you said that there was a written agreement between
19 Kominelli or some company on its behalf and Blagosostoyaniye or
20 some company on its behalf, but although you might have been
21 shown a copy of it by Sachkov, you never had a copy of it,
22 correct?

23 A. I wasn't a party to the agreement, so, no, I never had it.

24 Q. But you do know, or at least it is your understanding, that
25 transfer number 4 happened, correct?

G46EKIS1

Dikker - cross

1 A. Both sides confirmed it.

2 Q. And it was your understanding that transfers numbers 5 and
3 6 also happened, correct?

4 A. They were also confirmed by all the parties, yes.

5 Q. When you say "all the parties," who are you talking about?

6 A. Transfer number 5 was confirmed by Kislin, Sachkov and
7 Demidov. Transfer number 6 was confirmed by Sachkov and
8 Semernin.

9 Q. So transfer number 5 was the transfer of the 16 million
10 from Blagosostoyaniye to Kominelli, correct?

11 A. Money belonging to Blagosostoyaniye through their entities
12 to Kominelli.

13 Q. And transfer number 6 was the transfer of about \$4 million
14 from Blagosostoyaniye or some company on its behalf to Semernin
15 or some company with which he was connected?

16 A. I'm sorry, but I think transfer number 6, I think there
17 should be some sort of a correction to that. Blagosostoyaniye
18 could not have transferred funds through Semernin's company.
19 Even their representative company could not have. I don't know
20 how that was actually performed.

21 Q. Do you know who or what company transferred \$4 million
22 approximately to either Semernin or some company he was
23 affiliated with?

24 A. Well, like I said, I don't know what the company was that
25 actually performed that transfer. I know that this was either

G46EKIS1

Dikker - cross

1 Sachkov or people on his behalf. I'm just telling you that it
2 couldn't have been Blagosostoyaniye themselves because
3 Blagosostoyaniye had no interaction or no legal agreement with
4 Semernin.

5 Q. Did Sachkov or some people on his behalf have -- withdrawn.

6 Whatever the entity was that transferred the 4 million
7 to Semernin or some company that he was affiliated with, those
8 funds, as far as you know, originated from Blagosostoyaniye or
9 some company on its behalf, correct?

10 A. That's my understanding, yes.

11 Q. Am I correct that there was no written agreement between
12 you and Mr. Kislin, or you and Mr. Parilis and Mr. Kislin, for
13 the payment of \$20 million to Mr. Kislin in exchange for his
14 51 percent TRI ownership?

15 A. No, there was no agreement.

16 Q. But you do know from your conversations with Mr. Kislin
17 during the negotiation for his buyout that he was expecting to
18 receive \$20 million in exchange for the transfer of his TRI
19 ownership ultimately?

20 A. At the time that the buyer first was found, at the time
21 that Blago first got involved, that \$20 million was the amount
22 that was discussed.

23 Q. You keep referring to Blagosostoyaniye as the buyer, but
24 Blagosostoyaniye was the buyer of the Solid-Podmoskovny shares,
25 correct?

G46EKIS1

Dikker - cross

1 A. Yes, that's correct.

2 Q. So Blagosostoyaniye was not the purchaser of Mr. Kislin's
3 51 percent ownership of TRI, was it?

4 A. Yes, that's correct.

5 Q. You and Mr. Parilis from your companies were the purchasers
6 of Mr. Kislin's 51 percent ownership of TRI, correct?

7 A. Yes, that's correct.

8 Q. And the sale of the Solid-Podmoskovny from TRI through
9 Lentesco to Kominelli and then to Blagosostoyaniye was done
10 just to facilitate the sale of -- the purchase by you and
11 Mr. Parilis of Mr. Kislin's 51 percent ownership, correct?

12 A. No, that's not correct. If you want to know, I can clarify
13 it.

14 Q. Go ahead.

15 A. After the fact that -- well, the 51 percent of the shares
16 of Solid-Podmoskovny were transferred to the structure that
17 belonged to Mr. Kislin or Mr. Sachkov under the power of
18 attorney of Mr. Kislin, the company TRI was left only with
19 shares that had been -- that had belonged to OptTorgLider and
20 Interprogress. Because there were agreements on projects that
21 had nothing to do with the transaction, the sale to Blago, the
22 restructuring or the splitting-up with Mr. Kislin was going to
23 be done project by project. So TRI was left only with the
24 shares of Solid-Podmoskovny, which belonged to OptTorgLider and
25 Interprogress. That was a purely technical transaction. We

G46EKIS1

Dikker - cross

1 didn't even have to pay the nominal amount for that. Okay,
2 that's it.

3 Q. Mr. Dikker, you're talking about the technical aspects of
4 various agreements that were being made more or less around the
5 same time. But my question is more broad than that, so let me
6 ask it a different way.

7 You've identified three written contracts. The first
8 one is reflecting my transfers 1 and 2 on Exhibit 12. The
9 second is identified in transfers 3 and what we've identified
10 as 3.1. And the third is between Blagosostoyaniye or some
11 company on its behalf and Kominelli or some company on its
12 behalf.

13 Those three written agreements were all put together
14 for the sole purpose of facilitating the buyout by you and
15 Mr. Parilis of Mr. Kislin's 51 percent ownership; is that
16 correct?

17 A. No.

18 Q. I'm going to refer back to your affidavit or your
19 declaration, Defendant's Exhibit 7.

20 THE COURT: That's Defendant's Exhibit F.

21 MR. DANNENBERG: I'm sorry, Defendant's Exhibit F.

22 Thank you.

23 Q. In paragraph five, which starts at the bottom of page two,
24 you refer to a document called first memorandum of
25 understanding. Do you see that?

G46EKIS1

Dikker - cross

1 A. Yes.

2 Q. But you didn't produce any such document during the
3 pretrial discovery in this case, and you haven't produced it at
4 trial, have you?

5 A. No, I did not provide it. Unfortunately, I do not have a
6 copy.

7 Q. Nor do you have a copy of the second memorandum of
8 understanding, which is referred to in paragraph 6. And you
9 haven't produced that in this case, have you?

10 A. Correct. I did not provide that either, again, for the
11 same reason.

12 Q. Bear with me for a second. When Mr. Kislin came to you the
13 day after these various transactions were completed and
14 demanded payment of \$4 million, an additional \$4 million, you
15 understood that was the same \$4 million that had been diverted
16 to Mr. Semernin, correct?

17 A. Yes. He was talking specifically about those funds.

18 Q. And those conversations between you and Mr. Kislin over the
19 payment of an additional \$4 million continued for some period
20 of time, correct?

21 A. Yes.

22 Q. And at some point those discussions evolved into the idea
23 of transferring to Mr. Kislin additional shares that TRI owned
24 in Solid-Podmoskovny, correct?

25 A. No.

G46EKIS1

Dikker - cross

1 Q. Do you deny that you and Mr. Kislin ever discussed
2 transferring to him or some company that he was affiliated with
3 254,556 shares of Solid-Podmoskovny?

4 A. I'm not denying that there was a conversation about this.
5 Your question was different. Your question was that we were
6 discussing the amount -- well, it started out with -- my
7 position was that this was a business expense and it should be
8 treated as such.

9 Q. What was a business expense?

10 A. The 4 million.

11 Q. And how were you suggesting you have to treat it?

12 A. My position was that the business paid this; that this was
13 something that was paid and that Kislin agreed to it, to the
14 smaller amount. And that was his issue. This wasn't money, as
15 Mr. Kislin had stated yesterday, that I had somehow stolen from
16 his account or something like that. This wasn't money that I
17 received in exchange for some sort of additional assets or
18 shares that I sold to Mr. Semernin or anything like that. This
19 was real money that had to be paid from the business that we
20 had received real profit from before.

21 Q. Nevertheless, Mr. Dikker, at some point in time you and
22 Mr. Kislin discussed the concept of transferring to him 254,556
23 shares of Solid-Podmoskovny owned by TRI?

24 A. You're pulling out pieces from the middle from different
25 parts. Yes. If you want to know whether that was ever

G46EKIS1

Dikker - cross

1 discussed, yes. The answer is yes. But you're not going
2 through this in a chronological manner.

3 Q. I'll accept your criticism of my question.

4 But the answer is yes, at some point you had that
5 discussion?

6 A. Yes, at some point that was discussed.

7 Q. And the reason why that figure, 254,556, was chosen was
8 because it was a valuation at that point of Solid-Podmoskovny
9 shares at \$4 million, correct?

10 A. Not really. If you want, I can explain.

11 Q. Go ahead.

12 A. This amount of 254,000 shares appeared prior to the crisis;
13 after the transaction, Blagosostoyaniye, but prior to the
14 crisis. And it was related not to the Solid fund but to the
15 Boyarkino Invest fund. Subsequently, when we were rewriting
16 the agreements, that number just went from the one fund to the
17 other fund.

18 Q. When you were rewriting what agreements?

19 A. I pointed it out here. We wrote the agreements four times,
20 or rather, three times. There was the original agreement, and
21 then there were three rewrites of that agreement.

22 Q. You're talking about the memoranda of understanding that
23 are referred to in paragraphs five, six and nine of the
24 declaration?

25 A. Yes.

G46EKIS1

Dikker - cross

1 Q. And is it your testimony that those three memoranda of
2 understandings were each done at different times in order to
3 figure out a way to get Mr. Kislin to be satisfied that he was
4 getting everything that he was entitled to under the original
5 buyout agreement of his shares?

6 MR. BERKOVICH: Objection to form.

7 THE COURT: Sustained.

8 We're going to break for lunch at this point. We'll
9 resume at 2:15.

10 Mr. Dannenberg, how much longer do you expect?

11 MR. DANNENBERG: I really thought we'd be done by now,
12 your Honor, so my predictions have not been good. But
13 certainly less than an hour.

14 THE COURT: Mr. Berkovich, do you expect --

15 MR. BERKOVICH: My redirect should not take more than
16 15 minutes, your Honor.

17 THE COURT: Okay.

18 MR. BERKOVICH: May I mention other things that we may
19 be doing in terms of the time management?

20 From my point of view, the only thing that I would
21 like to introduce is what was done by Mr. Dannenberg yesterday,
22 to introduce some pages to depositions of Mr. Kislin.
23 Mr. Dannenberg may have some objections.

24 And the rest of it is up to your Honor, whether you
25 want closing statements or they should be done in writing, etc.

G46EKIS1

Dikker - cross

1 Obviously it's your Honor's decision in terms of the time
2 management.

3 THE COURT: All right. We'll resume at 2:15.

4 (Luncheon adjournment)

G46EKIS1

Dikker - cross

AFTERNOON SESSION

2:31 p.m.

THE COURT: Mr. Dikker, can you take the stand.

You may proceed, Mr. Dannenberg.

MR. DANNENBERG: Thank you.

BY MR. DANNENBERG:

Q. We left off before lunch, Mr. Dikker, with the reference to paragraphs five, six and nine of your declaration, Defendant's Exhibit F. In particular, you were referenced to what is characterized as a first memorandum of understanding, a second memorandum of understanding and a third memorandum of understanding.

The third memorandum of understanding, you indicated that paragraph nine was actually reflected in two separate documents, which are the documents, or at least the Russian versions of documents, that were marked as Plaintiff's Exhibits 3 and 4 in evidence, correct?

A. Yes.

Q. Those two documents were furnished by Mr. Kislin during the course of pretrial discovery in this case. Do you recall that?

A. Yes.

Q. You yourself do not have copies, nor have you produced copies in this case, of any one of the three memoranda of understandings that were reflected in paragraphs five, six and nine of your declaration?

G46EKIS1

Dikker - cross

1 A. I don't have them.

2 Q. But you indicated, correct me if I'm wrong, before the
3 lunch break that all three of these memoranda of understanding
4 were prepared sometime after the transactions that were
5 reflected on those list of transfers in my Plaintiff's
6 Exhibit 12 for identification?

7 A. Yes.

8 Q. And each of the memoranda of understanding was a document
9 that was signed by you and Mr. Kislin and nobody else, correct?

10 A. Yes.

11 Q. We have a third from Plaintiff's Exhibits 3 and 4. But can
12 you approximate when the first memorandum of understanding and
13 the second memorandum of understanding were prepared and
14 signed?

15 A. Number one was prepared -- was signed -- I couldn't tell
16 you the exact date but it was in April of 2008.

17 Number two was signed after the crisis, after we
18 realized that Semernin was going to take all of the shares for
19 himself. And this was signed approximately either November,
20 December of '08 or January of '09.

21 And number three and four, you have there.

22 Q. That answer confused me. I'll tell you why, Mr. Dikker.
23 Mr. Semernin took the \$4 million at or before the time of the
24 larger transaction which was reflected in Exhibit 12, correct?

25 A. Yes, that's correct.

G46EKIS1

Dikker - cross

1 Q. But didn't you say that each of these memoranda of
2 understanding was done after the larger transaction?

3 A. Of course it was after.

4 Q. Let me just set -- in terms of a time frame, there was a
5 transfer of the \$16 million to Lentesco that we were talking
6 about this morning. And you indicated that the next day
7 Mr. Kislin was in your office talking about how he was going to
8 get an additional \$4 million. Do you remember that?

9 MR. BERKOVICH: Objection to form, your Honor.

10 THE COURT: What's your objection?

11 MR. BERKOVICH: Objection is that assumes a fact not
12 in evidence. It assumes that there was a transfer of
13 \$16 million to the company called Lentesco. It's -- I believe
14 the evidence will show that the witness testified his transfer
15 of \$16 million was to a company called Kominelli or one of its
16 designees but not --

17 MR. DANNENBERG: I'll rephrase the question. That's
18 what Mr. Berkovich heard.

19 BY MR. DANNENBERG:

20 Q. Correct me if I'm wrong, but did you testify this morning
21 that one day after \$16 million was transferred to the Kominelli
22 account from that buyout transaction, Mr. Kislin was in your
23 office saying, how am I going to get an additional \$4 million?

24 A. Yes.

25 Q. Relative to that date that he said, where he first said,

G46EKIS1

Dikker - cross

1 how am I going to get an additional \$4 million, how many days,
2 weeks or months later did you and Mr. Kislin prepare and
3 sign -- how many days, weeks or later did you sign the first
4 memorandum of understanding that's referred to in paragraph
5 five of your declaration?

6 A. I don't remember exactly. Maybe a month or two later.

7 Q. And who prepared that document?

8 A. I sketched it out, but Levkovsky is the one who actually
9 prepared it.

10 Q. Again, at the time Mr. Levkovsky was the financial director
11 at TRI?

12 A. It essentially was, but not nominally.

13 Q. He was not a lawyer, correct?

14 A. No, he was not a lawyer.

15 Q. And relative to the date on which the first memorandum of
16 understanding was signed, how many days, weeks or months later
17 was the second memorandum of understanding signed?

18 A. As I just said, end of 2008, beginning of 2009. I don't
19 remember the exact month.

20 Q. Okay. And --

21 A. Maybe seven or eight months later.

22 Q. Who prepared that document, the second memorandum of
23 understanding?

24 A. The same individuals. I gave some changes, put some
25 changes, and Levkovsky prepared it.

G46EKIS1

Dikker - cross

1 Q. And was that the same thing that was done with the third
2 memorandum of understanding; you sketched it out and
3 Mr. Levkovsky actually prepared it?

4 A. I just jotted down a few things. There were just a few
5 minor changes from the second one, so it was the same thing.
6 The third and the fourth one were prepared by Levkovsky.

7 Q. Each of these three documents -- the first, second and
8 third memorandum of understanding -- were intended by you and
9 Mr. Kislin to address Mr. Kislin's claim for the additional
10 \$4 million he is seeking from the buyout transaction, correct?

11 A. Can I clarify that question?

12 Q. I'd prefer an answer. You don't have to clarify the
13 question.

14 THE COURT: Do you understand the question?

15 THE WITNESS: Yes, I understand it.

16 THE COURT: All right. Then you should answer it.

17 A. No. It wasn't to return \$4 million to him that he felt
18 that we owed him.

19 Q. What were they intended to do, then?

20 A. I felt that this whole business was successful because of
21 Mr. Kislin's contribution. And so I felt that it would be
22 improper to just disregard his concerns. And after discussion
23 with my business partner, we brought him back to selling the
24 real estate shares -- the property shares, rather, by
25 providing -- giving him part of the Boyarkino Invest. I'm

G46EKIS1

Dikker - cross

1 sorry, not the actual Boyarkino Invest, but a limited amount of
2 the proceeds from the sales of the shares of Boyarkino Invest.

3 At the same time, the division of the revenue streams
4 from the cash flow was at the time being divided among the
5 three parties. So it wasn't going all to Mr. Kislin. Part of
6 it went to development, to developing the company -- I'm sorry,
7 development of the properties. The second part went to
8 Mr. Kislin. And the third part of the cash flow went to us.
9 By "us" I mean OptTorgLider and Interprogress; essentially to
10 TRI.

11 Q. Now, let me just ask about one phrase that you used at the
12 beginning of that answer. You said that you were trying to
13 address his concerns. That's the phrase that you used.

14 The concerns that you were referring to was an
15 expression on Mr. Kislin's part of a belief that he had that he
16 was still owed \$4 million. I'm not saying that you agree with
17 him, but he expressed a concern to you that he was still owed
18 \$4 million. Isn't that true?

19 A. No. I had a different motivation.

20 Q. I'm not asking what your personal motivation was. I'm
21 asking you to explain the phrase that you used, to address his
22 concerns. I'm asking whether it's true that the concern that
23 he raised with you was that he was still owed another
24 \$4 million from the buyout transaction.

25 A. That was his opinion. Yes.

G46EKIS1

Dikker - cross

1 Q. And in order to address that concern, you put together a
2 concept of a way to generate funds that you and Mr. Parilis
3 would share with Mr. Kislin, correct?

4 A. Correct.

5 Q. So we don't have the first and second memoranda of
6 understanding, but they're referred to and characterized in
7 your declaration.

8 But we do have what you call a third, which is
9 actually two separate documents. So let me focus on those two
10 documents, starting with Plaintiff's Exhibit 3. Exhibit 3 is
11 the one that was signed in November of 2009, correct?

12 A. Yes, correct.

13 Q. Now, in your declaration, with respect to all three
14 memorandum of understanding, including this one, you used a
15 Russian word, *Ponyateika*, P-O-N-Y-A-T-E-I-K-A. And could you
16 explain what that word means in English.

17 A. The thing is in reality, in the activity of TRI, the normal
18 activity of TRI, there was a large number of documents that
19 were being prepared, agreements and other documents. Sam never
20 really -- was never involved and never read and asked not to be
21 inundated with these agreements.

22 THE COURT: I'm sorry. I'm going to break in,
23 Mr. Dikker, because the question was very simple.

24 Mr. Dannenberg asked you if you could define the
25 Russian word *Ponyateika*. That's the question. So can you tell

G46EKIS1

Dikker - cross

1 us what *Ponyateika* means in English.

2 THE WITNESS: I agree with the translation. It's a
3 type of memorandum of understanding.

4 Q. And you used that term, *Ponyateika*, or memorandum of
5 understanding, to distinguish from an actual legal contract; is
6 that your intent in using that term?

7 A. When things reached a level of a legally binding agreement,
8 then the conditions, the terms in the memorandum of
9 understanding, were that transfer into the legally binding
10 agreement.

11 Q. Okay. So am I correct that the reason why you used that
12 Russian word in paragraphs five, six and nine of your
13 declaration was to make clear that these were not intended to
14 be binding agreements?

15 A. Sorry. Could you just repeat that one more time.

16 Q. I'm trying to understand your reasoning in using that term
17 in paragraphs five, six and nine of your affidavit. And I'm
18 asking whether the reason why you used it was to be able to
19 express a belief that these three documents that were referred
20 to as memorandum of understanding were not legally binding
21 documents.

22 A. They certainly were not legal documents. At any point
23 while they were being implemented, things could turn in a way
24 that any number of the points could not be fulfilled, at which
25 point we would go back and renegotiate the terms of the

G46EKIS1

Dikker - cross

1 memorandum of understanding. That's the way Sam and I worked.
2 We were constantly reviewing and renegotiating the terms of the
3 memorandums.

4 (Continued on next page)

G46HKIS2

1 BY MR. DANNENBERG:

2 Q. Well, let me ask you, sir, do you have the actual Russian
3 document that was signed in November of 2009 in front of you
4 that's part of Plaintiff's Exhibit 3? The word *Ponyateika* does
5 not appear anywhere in that document; am I correct?

6 A. It's just, like, a nickname. So the fact that the word
7 isn't here, that doesn't mean that this is some sort of a legal
8 agreement. By Russian law the points in this, in this
9 document, cannot be enforced as a legal agreement.

10 Q. With all due respect, I see your knowledge of Russian law,
11 Mr. Dikker --

12 THE INTERPRETER: Sorry, from the interpreter. Just a
13 clarification, that's the witness, the witness states.

14 A. That's not what I meant. I meant that none of these points
15 in this memorandum could be performed as part of the agreement.
16 Each one of these forms, points in this memorandum, had to be
17 separately -- set separately into an agreement or agreed to
18 separately.

19 Q. Mr. Dikker, I asked you a yes-or-no question, and if you
20 can't answer a yes or no, tell me; but if you can, I'm just
21 looking for a yes-or-no answer.

22 Was the word *Ponyateika*, the Russian word, used in the
23 Russian version of the document that's marked as Plaintiff's
24 Exhibit 3?

25 A. No.

G46HKIS2

1 Q. When you got the document from Mr. Levkovsky -- by the way,
2 the one that you signed in November of 2009, was that the only
3 version of that particular agreement, the third memorandum of
4 understanding that Mr. Levkovsky did, or did it go through some
5 revisions?

6 A. Possibly. I don't recall.

7 Q. When you saw the document, before you signed it --

8 THE COURT: Could we refer to it by the exhibit.
9 You're talking about plaintiff's exhibit; right?

10 MR. DANNENBERG: I'm talking about that, yes.

11 THE COURT: So let's refer to it by the exhibit. We
12 have the exhibit. Let's refer to it by the exhibit number.

13 Q. When you saw the Russian document that's part of
14 Plaintiff's Exhibit 3 and you saw at the very top of it the
15 heading said, "Agreement No. 12-11/1", did you go to Levkovsky
16 and say, This is not an agreement. This is just a memorandum
17 of understanding, or words to that effect?

18 A. I did not say that, but this is the personal numbers or
19 recordkeeping of Levkovsky. This is not a legal recordkeeping.
20 Meaning the dash, 12-11.

21 Q. Now I'm referring to paragraphs 6B and 8 of Plaintiff's
22 Exhibit 3. In particular, the reference in each of those
23 paragraphs to 254,556 shares of Solid-Podmoskovny for the other
24 fund that's referred to in that document, Russkoye Polye. Do
25 you see that?

G46HKIS2

1 A. Do you mean those paragraphs?

2 Q. I'm just asking if you see that number in those two
3 paragraphs.

4 A. Yes, I see it.

5 Q. Where did that number come from?

6 A. It was automatically transferred from the first memorandum.

7 Q. Where did it come from in the first memorandum? Why did
8 you pick that particular number?

9 MR. BERKOVICH: Object to the form.

10 THE COURT: Sustained.

11 Q. Why was the number 554,500 -- 254,556 shares of
12 Solid-Podmoskovny fund chosen in that first memorandum of
13 understanding?

14 A. The specific -- the first memorandum was determined by the
15 reality at the time.

16 Q. The reality being that at that time --

17 A. (In English) I am not done. I'm sorry.

18 THE INTERPRETER: "I am not done. I'm sorry."

19 A. At that time, the -- probably shares of Boyarkina Invest.
20 This was before --

21 THE COURT: Just to confirm this, you've given all
22 these names to the court reporters; right?

23 MR. DANNENBERG: Not Boyarkina. That was not on the
24 list.

25 THE COURT: Every single foreign name, reference, I

G46HKIS2

1 want provided to the court reporters so we have an accurate
2 transcript.

3 MR. DANNENBERG: That was one --

4 THE COURT: There's a term called Boyarkina Invest?

5 MR. DANNENBERG: That was the one I did not know
6 about, but I did put all the other ones in there.

7 THE COURT: All right. So I guess we should probably
8 spell it for this court reporter now.

9 Go ahead. Okay. Go ahead, Mr. Dikker. I interrupted
10 you. Finish your answer.

11 THE WITNESS: The last transaction with Boyarkina
12 Invest with a buyer that was brought over by Semernin was
13 transacted at a price that allowed us to split the cash flow in
14 such a way for TRI and Sam to split \$4 million and to leave
15 another \$2 million for the development of properties, of other
16 properties.

17 BY MR. DANNENBERG:

18 Q. Let me ask about Exhibit 3. Exhibit 3 has that \$4 million
19 reference in it. It appears twice in paragraphs 6A and 8. Do
20 you see that?

21 A. Yes, I see it.

22 Q. What is said in those two paragraphs -- I'm only talking
23 about this document -- is that the division of proceeds from
24 the sale of certain assets or equities was going to be divided
25 in a way that Mr. Kislin would be given a share up to

G46HKIS2

1 \$4 million. Is that what it says?

2 A. Yes, that's correct.

3 Q. Putting aside the first and second memorandum of
4 understanding, because we don't have them in front of us, just
5 talking about this document, Plaintiff's Exhibit 3,
6 essentially, what you were reflecting in that agreement was
7 that the division of proceeds, regarding the sales that are
8 referred to in the document, would be such that the maximum
9 amount that Mr. Kislin could be given would be either a
10 transfer of 254,556 shares of the equity or \$4 million or some
11 combination that added up to \$4 million, but no more; correct?

12 A. Yes.

13 Q. Now, paragraph 1 of Exhibit 3 refers to exchange of 254,556
14 units of the Solid-Podmoskovny for the other fund that's
15 referenced there, Russkoye Polye; correct?

16 A. Yes.

17 Q. In paragraph 2, there is a deadline for that exchange of
18 December 31, 2009. Do you see that?

19 A. Yes.

20 Q. At the time that you signed the document in November of
21 2009, did you believe that you would be able to accomplish that
22 exchange by December 31, 2009?

23 A. We thought so, yes.

24 Q. On what basis do you believe that you were going to be able
25 to accomplish that exchange of shares by December 31, 2009?

G46HKIS2

1 A. At that time there was a credit open for the development of
2 property, property, land. And the way things were moving
3 along, we were convinced that we would be finished by that
4 point.

5 Q. At that point had the Russkoye Polye fund been created?

6 THE COURT: As of what point?

7 MR. DANNENBERG: I'm talking about at the point he
8 signed Exhibit 3.

9 A. Russian -- Russkoye Polye had been created.

10 Q. Had TRI already become an equity shareholder, bondholder,
11 in Russkoye Polye at the time that he signed Exhibit 3?

12 MR. BERKOVICH: Objection to form, your Honor.

13 THE COURT: What's your problem with the question?

14 MR. BERKOVICH: That it assumes facts not in evidence.
15 He didn't ask the question whether Simon Dikker had any equity
16 units in Russkoye Polye.

17 THE COURT: Sustained.

18 BY MR. DANNENBERG:

19 Q. At the time that you signed Exhibit 3, did TRI already own
20 any shares or equity interest in Russkoye Polye?

21 A. It did not own any of the property shares.

22 Q. At any point in time after November 2009 when you signed
23 Exhibit 3, did TRI become an equity interest holder in the
24 Russkoye Polye fund?

25 A. Prior to that point where I left Russia, no, that never

G46HKIS2

1 happened.

2 Q. When did you leave Russia?

3 A. Beginning of July 2013.

4 Q. To your knowledge, did TRI acquire any interest in Russkoye
5 Polye fund at any time after you left Russia in July 2013?

6 A. I don't know that. I don't think so.

7 Q. Am I correct that you were not able to accomplish the
8 exchange of shares referred to in paragraph 1 of Exhibit 3
9 prior to December 31 of 2009?

10 A. Yes, I was -- yes, we weren't able to. TRI never held any
11 of the shares, and we did not even get to the point where we
12 could think of selling them. We never had a single share.

13 Q. So there never came a point, to your knowledge, in which an
14 exchange of any Russkoye Polye -- any Solid-Podmoskovny shares
15 owned by TRI were exchanged or converted to Russkoye Polye
16 shares?

17 A. As far as I know, no, never.

18 Q. With regard to the other time frame that's referred to in
19 Exhibit 3 which is at paragraph 7 that refers to the time frame
20 for selling off Russkoye Polye shares, and refer to the time
21 period of December 2009 through May of 2010, that, obviously,
22 could not have happened either because there was never any
23 conversion to begin with of Solid-Podmoskovny to Russkoye
24 Polye?

25 A. That's correct.

G46HKIS2

1 Q. Take a look at paragraph 52 of your declaration,
2 Defendant's Exhibit F, page 14.

3 I'll just read the part I'm going to be asking you
4 about: "To the best of my understanding, as described above,
5 the additional TRI shares of Russkoye Polye could not be sold
6 under the two memoranda of understanding produced by Kislin,
7 see Plaintiff's Exhibits 3 and 4, because of the sharp decline
8 in real estate market in Russia and restructuring of Russkoye
9 Polye."

10 Do you see that? My only question is do you see that?

11 A. Yes.

12 Q. Why would you use the phrase "the additional TRI shares of
13 Russkoye Polye" when you say that there were no shares of
14 Russkoye Polye owned by TRI?

15 A. I don't have a response to that question. I think that
16 that's a mistake, a typo.

17 Q. You say typo. You mean it's false, what's written in
18 paragraph 52 of your declaration; correct?

19 A. The word "additional" is incorrect.

20 Q. Well, if you say additional was correct, it implies there
21 was something to begin with?

22 A. Additional is incorrect.

23 Q. If you say the word "additional" is incorrect, it still
24 implies there's something to begin with, but your testimony
25 here today was that there were never any TRI shares in Russkoye

G46HKIS2

1 Polye; isn't that your testimony?

2 A. Can I respond in a non-yes-or-no form and explain?

3 Q. I'd like to know why you can't answer that yes or no?

4 A. Because it would not clarify the situation in any way.

5 Q. Let me rephrase it. I'm sorry, your Honor.

6 THE COURT: All right.

7 Q. Is it fair to say that any reference in paragraph 52 of
8 your declaration or anywhere else in your declaration in which
9 a reference is made to TRI owning shares of Russkoye Polye is
10 incorrect?

11 A. Can I explain the situation or not?

12 Q. You seem to be dying to give me an explanation, so go
13 ahead.

14 A. TRI, in an agreement with the board of directors, was
15 supposed to own 25 percent of the shares of Russkoye Polye.
16 The management, Trinfko, froze the awarding of the shares until
17 the development of the property, of the land, was to be
18 completed.

19 Q. I understand, Mr. Dikker. You're not really explaining
20 what the answer to my question is, though.

21 My question is any suggestion made in your declaration
22 that TRI actually owned shares in Russkoye Polye is incorrect;
23 correct? Am I correct?

24 A. If it says that TRI owns shares of Russkoye Polye, yes,
25 that's incorrect.

G46HKIS2

1 Q. So the management freeze that you're referring to, you just
2 referred to in your answer and that you're referring to in
3 paragraph 52, was a freeze on the sale or disposition or
4 transfer of shares of Solid-Podmoskovny; correct?

5 A. Russkoye Polye.

6 Q. Are you saying that the management --

7 THE COURT: You used the terms Solid-Podmoskovny. Did
8 you intend to use that term?

9 MR. DANNENBERG: Yes.

10 THE COURT: Okay. So he said no, it's the Russkoye
11 Polye.

12 Q. In that case, Mr. Dikker, I don't understand because you're
13 saying that management --

14 A. (In English) I'm sorry for interruption.

15 I'm sorry for interrupt. I thought that you misspoke,
16 so I didn't respond to your question yet. You had --

17 Q. I want to make the record clear, so let me rephrase the
18 question. I'll withdraw the last question.

19 When you talked in a prior answer about a management
20 company freeze, and when you used that phrase, the management
21 company froze the sale in paragraph 52, are you talking about a
22 freeze in the sale of Russkoye Polye shares?

23 A. I meant the shares of Russkoye Polye, but in this
24 paragraph, it says -- uses the word "froze the sales." The
25 actual freezing was freezing of the distribution among the

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holders of the shares.

Q. But there was no freeze on the acquisition of shares -- withdrawn. Withdrawn.

Let me just ask you if there's another mistake in paragraph 52, because it talks about, in line 4 going to line 5, Russkoye Polye management company froze the sale of all shares, with a capital "S" of the word "shares." Do you see that? And the reason that the word -- that the letter "S" is capitalized in the word "shares" is because it's a defined term in this document, a definition being set forth in the last sentence of paragraph 1; isn't that true?

A. Yes, that's correct.

Q. Are you now saying that it was a mistake by capitalizing the letter "S" in paragraph 52 because the word "shares" with a capital "S" is defined as shares of Solid-Podmoskovny in paragraph 1?

A. Yes.

Q. Solid-Podmoskovny shares were not being frozen, were they?

A. No, they were also frozen at the demand of Blagosostoyaniye.

Q. I didn't understand that answer. Could you explain.

A. Blagosostoyaniye also froze the shares. The reason that we switched from Solid-Podmoskovny to Russkoye Polye was because Blagosostoyaniye, through the registry, froze completely the sale of shares of Solid-Podmoskovny.

G46HKIS2

1 Q. When did that, that freeze by Blagosostoyaniye, take place?

2 A. At the end of -- no, I'm sorry, in the middle of 2009.

3 THE COURT: We're going to have to take a break at
4 this point, unless you tell me you're going to end in the next
5 minute.

6 MR. DANNENBERG: I'm going to end this section in the
7 next minute. Could I just finish this last question?

8 THE COURT: Well, I have a TRO. It's been waiting. I
9 assumed this was going to be over hours ago.

10 MR. DANNENBERG: Me, too, your Honor.

11 THE COURT: I have a TRO I have to address because it
12 has to be done today, so I'm going to come back as soon as I
13 can, but this is something I have to do now.

14 MR. DANNENBERG: I understand. But just for planning
15 purposes, I've got about 15 more minutes.

16 THE COURT: Hopefully we can still conclude today.
17 That's my hope.

18 MR. BERKOVICH: I will be short, your Honor. Again,
19 apparently, there's some objection to some of the deposition
20 pages, and I don't know how many.

21 THE COURT: I suggest this. While I'm upstairs, maybe
22 you can go through the deposition objections and maybe resolve
23 them so we don't have to waste time on that.

24 MR. DANNENBERG: Yes.

25 THE COURT: I'll be back as soon as I can.

G46HKIS2

(Recess)

THE COURT: Mr. Dikker, would you take the stand.

Please proceed, Mr. Dannenberg.

BY MR. DANNENBERG:

Q. Mr. Dikker, the other exhibit that you have before you is Plaintiff's Exhibit 4. That is the second part of what you called the third memorandum of understanding, and that is a document that you signed in 2012, is it not?

A. Yes, that's correct.

Q. Right before we broke this afternoon, you said that the Blagosostoyaniye management had frozen the Solid-Podmoskovny fund in the middle of 2009; correct?

A. They didn't freeze the fund. They froze the shares or, rather, blocked the shares, the distribution of shares.

Q. The shares of Solid-Podmoskovny?

A. Yes, that's correct.

Q. And that prevented any transfer or exchange of Solid-Podmoskovny fund shares for Russkoye Polye; correct?

A. No.

Q. What was the reason why you were unable to exchange the Solid-Podmoskovny shares for Russkoye Polye shares as reflected in Plaintiff's Exhibits 3 and 4?

A. Because of the lack of funds in the fund, we were never able to -- at least while I was in Moscow, we were never able to complete the development of the land, of the property, in

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1 the fund Russkoye Polye. And that was the reason why the
2 management company, Trinfko, did not allow the shares to be
3 distributed.

4 Q. The shares of what fund?

5 A. Russkoye Polye.

6 Q. That was the freeze that you were referring to in
7 paragraph 52 of your declaration; correct?

8 A. Yes, that's correct.

9 Q. Freeze by the management of Russkoye Polye for the issuance
10 of any Russkoye Polye shares; right?

11 A. Yes, the distribution of the shares.

12 Q. When did that freeze first go into effect?

13 A. It was actually the whole time. They were supposed to
14 unfreeze it when we finished up the development.

15 Q. When did that freeze go into effect?

16 A. Right from the beginning, from the time the fund was
17 registered, they did not allow the shares to be distributed.

18 Q. When did the fund become registered?

19 A. Sometime in the second half of 2009. I don't remember
20 exactly.

21 Q. Is it your testimony that at no time from the point at
22 which Russkoye Polye's fund was registered until you left
23 Moscow in July of 2013, did that freeze ever get removed?

24 A. Yes.

25 MR. DANNENBERG: No further questions. Thank you.

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Dikker - Redirect

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY MR. BERKOVICH:

4 Q. Mr. Dikker, actually, with respect to the last question
5 that was asked by Mr. Dannenberg, did anyone own shares in the
6 fund Russkoye Polye?

7 A. Yes, the companies that invested the land into the fund,
8 Russkoye Polye, they formally -- they received the shares of
9 the fund.

10 Q. Was there one company which owned shares in Russkoye Polye?

11 A. No, there wasn't one company. There were several of them.
12 I don't remember exactly, but it was at least five or six.

13 Q. Let me ask you this question: One way or the other, did
14 TRI own directly any shares in Russkoye Polye?

15 A. No. Those transactions were frozen.

16 Q. In your view, in your understanding, did TRI own indirectly
17 any shares in Russkoye Polye?

18 A. Of course, indirectly it did own some of the shares because
19 TRI owned 25 percent of the shares of those companies.

20 Q. Did anyone have a majority interest in any of these
21 companies that you just described?

22 A. No. When I was there, I don't think anyone ever had a
23 majority share of the companies.

24 Q. Did anyone control actions of any these companies that
25 owned the shares in Russkoye Polye?

1 A. With regards to the distribution, control of the
2 properties, of the land and the shares, the management company
3 Trinfko controlled the fund.

4 Q. When you testified earlier to the questions by
5 Mr. Dannenberg that Trinfko was freezing or preventing
6 distribution of shares, do you mean that Trinfko would not
7 distribute shares to the shareholders of the companies that
8 owned the shares?

9 MR. DANNENBERG: Objection.

10 THE COURT: Grounds?

11 MR. DANNENBERG: Objection to the form of the
12 question. He's asking a leading question.

13 THE COURT: Sustained.

14 Rephrase the question, Mr. Berkovich.

15 MR. BERKOVICH: Sure.

16 Q. You testified earlier, just a few minutes ago, as an owner
17 of 25 percent in the companies that owned the shares in
18 Russkoye Polye, did TRI have the ability to obtain the shares
19 of Russkoye Polye?

20 A. That's exactly what was frozen, the movement of the shares
21 from the companies that provided land, invested the land, to
22 companies like TRI and Lentesco. Those transactions were
23 frozen.

24 Q. TRI's inability to obtain the shares, actual shares, in
25 Russkoye Polye, the fund Russkoye Polye, was the reason for

1 that because TRI only owned 25 percent of these companies; is
2 that your understanding?

3 MR. DANNENBERG: Objection. Leading.

4 THE COURT: Sustained.

5 Q. Why wasn't TRI able to obtain shares, directly itself
6 obtain shares, in real estate fund Russkoye Polye?

7 A. The first reason was that TRI did not own the land; but,
8 rather, it was the companies that had invested it. Secondly,
9 it was a block that involved all of the parties, all the
10 investors, not only TRI.

11 Q. Would you just describe -- did you discuss this at any
12 point with Mr. Kislin?

13 A. I don't remember specifically, but I think so. I think
14 that there was this discussion because Sam asked questions
15 about this over the course of three years. So I had to explain
16 it to him.

17 Q. Now, I haven't asked you a question generally regarding the
18 shares in the real estate funds. We described several of them.
19 Were these shares like stock certificates in a corporation?

20 A. No, there were no stock certificates as it were. The
21 shares were controlled electronically. All of that was done in
22 electronic form. Some they were issued and reassigned
23 electronically. There were no physical certificates.

24 Q. Was it a government agency that controlled administration
25 of the shares in the real estate funds?

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Dikker - Redirect

1 A. The responsibility was of the main state registry for
2 shareholders, but because of the sheer volume of the work, they
3 were not able to perform all of it. So they subcontracted the
4 process out to these special license firms that were holders of
5 registration information.

6 Q. Just to refresh your recollection with respect to the name
7 of the government agency, if you look both at Exhibit 3 and 4,
8 both of them, paragraph 1 of the exhibits, there's a Russian
9 Federal Commission for Securities Markets. Is this the
10 organization that was registering the shares?

11 A. So, essentially, they didn't register the actual shares.
12 They held the registration of the funds, the list of holders of
13 the funds. So the registration holders, the subcontractors,
14 were the ones who registered the individual shareholders.

15 Q. I just want to use the example based on your testimony.
16 You say you were familiar with the process. Let's say TRI
17 wanted to sell a hundred shares in one of the real estate funds
18 that it controlled to somebody else. What would be the process
19 of transfer of these kind of shares?

20 MR. DANNENBERG: Objection.

21 THE COURT: What's the grounds?

22 MR. DANNENBERG: He's asking a hypothetical question.

23 THE COURT: Overruled. He's trying to explain the
24 role of this state agency in a way that's comprehensible. Your
25 objection's overruled.

G46HKIS2

Dikker - Redirect

1 A. There would be an agreement, a contract of sale and
2 purchase. That agreement was then registered in the civil
3 records office of the county. Then this agreement was given to
4 the registration holding company, along with either some sort
5 of guaranty that payment would be made or proof that payment
6 has been made. And at that point, that registration holding
7 company would then just change the name of the holder of the
8 shares, for example, from TRI to another entity that now
9 controlled those shares.

10 Q. Mr. Dannenberg asked you several questions regarding the
11 three memoranda of understanding referred to in paragraphs 5,
12 6, and 9 of your affidavit. Do you recall that?

13 A. Yes.

14 Q. My understanding or my recollection is that you gave the
15 basic information regarding what should be in this memoranda of
16 understanding to Mr. Levkovsky who actually drafted it; is that
17 correct?

18 A. Yes, yes.

19 Q. Did you discuss the terms of these memoranda of
20 understanding with Mr. Kislin prior to giving instruction to
21 Mr. Levkovsky?

22 A. Of course.

23 Q. Does it apply to all three or every memoranda of
24 understanding referred to in your affidavit?

25 A. Yes, all of them.

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Dikker - Redirect

1 Q. Were the terms that you provided to Mr. Levkovsky the terms
2 that were, your understanding, agreed to between you and
3 Mr. Kislin?

4 A. Sometimes wasn't completely agreed, but both parties --
5 sometimes there was some changes that we would add after
6 Levkovsky had written the memorandum, but they were usually
7 minor changes that we added. The main part of the memorandum
8 were agreed to prior to giving that information to Levkovsky.

9 Q. When you use the term "we," are you referring to you and
10 Mr. Kislin agreeing on some changes or something else?

11 A. Yes, myself and Mr. Kislin. No one aside from us took part
12 in this -- in these *Ponyateika*, as we call them.

13 Q. Now, the question asked to you by Mr. Dannenberg is why the
14 word *Ponyateika* is not mentioned in Exhibit 3 and 4. Do you
15 recall that question?

16 A. Yes.

17 Q. Do you understand why the word *Ponyateika* does not appear
18 in Exhibit 3 or 4?

19 A. *Ponyateika* is just a simple word. It's not something that,
20 you know, you would put at the title of something, and that's
21 why. It's like slang, and that's why Levkovsky used the term
22 "agreement."

23 Q. By "slang," do you mean a business slang?

24 MR. DANNENBERG: Objection.

25 THE COURT: Sustained. I sustained the objection.

1 THE WITNESS: (In English) I'm sorry.

2 Q. Earlier today Mr. Dannenberg asked questions regarding your
3 and Mr. Kislin agreeing to \$20 million, a payout to Mr. Kislin.
4 Is this that you agreed with Mr. Kislin with respect to
5 \$20 million or you agreed to look for the buyer with respect to
6 \$20 million?

7 MR. DANNENBERG: Objection.

8 THE COURT: Grounds?

9 MR. DANNENBERG: Leading.

10 THE COURT: No, overruled.

11 A. I think I already answered this question. I was looking
12 for a buyer. I just came to an understanding with Mr. Kislin
13 about what would be a reasonable sum to try to find a buyer
14 for. And, by the way, when we started looking, we started out
15 with 30 million, not 20 million.

16 Q. You say "we." Are you referring to a sale to Mr. Sachkov
17 or anybody else?

18 A. Myself -- myself and Mr. Sachkov, yes. The two of us,
19 myself and Vadim Sachkov.

20 Q. Did you apprise Mr. Kislin with respect to your efforts to
21 find a buyer for the shares in the real estate fund?

22 A. Of course we kept him informed, but that information he
23 wasn't very interested in, Mr. Kislin. As soon as we found an
24 actual buyer, that's when he became more interested and wanted
25 to be involved.

1 Q. Am I correct to understand that a real estate fund in which
2 Blago ultimately purchased shares did not exist until you have
3 arrived at some understanding with Blago; is that correct?

4 MR. DANNENBERG: Objection.

5 THE COURT: Grounds?

6 MR. DANNENBERG: Leading question.

7 THE COURT: Overruled.

8 You can answer the question.

9 A. In reality, we started registering, myself and Mr. Sachkov,
10 started registering the fund, not investing property or land
11 into the fund but just registering the fund itself in advance
12 because just the registration of the fund takes several months
13 before you could actually invest property into the fund. But
14 the actual assets only started -- only started investing the
15 actual assets into the fund after the agreement had been or
16 understanding had been reached with Blago.

17 Q. Not just understanding, am I correct it was no agreement,
18 nothing was finalized, but there was a preliminary
19 understanding; is that my understanding of --

20 THE COURT: Sustained.

21 MR. DANNENBERG: Objection.

22 THE COURT: Try not to lead, Mr. Berkovich.

23 MR. BERKOVICH: I have only very little, your Honor.

24 I would like to show the witness exhibit. It's Defendant's
25 Exhibit C.

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Dikker - Redirect

1 Q. Mr. Dikker, if you could tell me, if you know, what Exhibit
2 C is.

3 A. Yes, I do.

4 Q. What is it?

5 A. This is the structure of the company Trans Region Invest
6 and its subsidiaries at a certain point in time.

7 Q. If we're going into the time part, do you know who prepared
8 this document?

9 A. It was Runova.

10 Q. The attorney for the TRI; is that correct?

11 A. Yes.

12 Q. If you look at this document, is it fair to say that it
13 shows the ownership structure of TRI?

14 MR. DANNENBERG: Objection.

15 THE COURT: Grounds?

16 MR. DANNENBERG: He's leading the witness, your Honor.

17 THE COURT: He's trying to get him to identify a
18 document and lay the foundation for its receipt. Now, how
19 would you suggest that he ask in a nonleading fashion whether
20 it accurately reflects the structure of TRI?

21 MR. DANNENBERG: He could ask what does it show.

22 THE COURT: No. Overruled.

23 Does it accurately show the structure of TRI and its
24 subsidiaries?

25 THE WITNESS: At a certain point in time, yes.

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Dikker - Redirect

1 THE COURT: At what point in time?

2 THE WITNESS: Approximately the beginning of 2007,
3 maybe the middle.

4 MR. BERKOVICH: I'd like to show the witness another
5 document. It's Defendant's Exhibit B.

6 Q. Mr. Dikker, are you familiar with this document,
7 Defendant's Exhibit B?

8 A. Yes.

9 Q. Tell me what this is.

10 A. It is a similar structure of the company as the prior
11 document, except at a different point in time. I believe this
12 is the end of 2005, middle of 2006.

13 Q. Does it accurately reflect, to the best of your
14 recollection, the structure of TRI at that time?

15 A. As far as I recall, yes, it does. We made these for our
16 internal needs, to clarify things internally. I believe so,
17 yes.

18 Q. With respect to the org document, if you see, in addition
19 to the three companies which are owners of TRI, which is
20 Brunlow, OptTorgLider, and the third company which escapes my
21 recollection at this point -- and Interprogress, in addition to
22 these three companies, there are also many other companies.
23 Can you tell me what these companies were, if you remember?

24 A. Aside from working with shares of land, property, the main
25 activity of TRI was the development of property and land. And

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Dikker - Redirect

1 it was broken up into different projects that consisted of
2 either a large parcel of land or several parcels of land that
3 were combined into one project. Each one of them had their own
4 overall concept. One of them might be breaking up the land
5 into small properties, subdividing it into small plots of land
6 and selling off the plots. Or it might be the creation of a
7 development plan for developing the property and then selling
8 the property, along with that plan, for its development, along
9 with the various permits for the development. Or in some
10 instances, not many but a few instances, the property actually
11 had houses built on them.

12 Q. Did TRI actually own any land, TRI itself?

13 A. No.

14 Q. I think you said on a number of occasions that TRI
15 transferred title to some real estate into the fund. Did you
16 mean that TRI did it itself, or was it done by any of the
17 companies listed in Exhibit H and G -- I'm sorry, B and C?

18 A. No, of course it was done by the subsidiary companies that
19 actually owned the properties, the land.

20 MR. BERKOVICH: Your Honor, I have no further
21 questions, and I move to have this exhibit, Plaintiff's
22 Exhibit -- Defendant's Exhibit, I'm sorry, B and C to be
23 admitted into evidence.

24 MR. DANNENBERG: Objection on two grounds, your Honor.
25 One is hearsay and failure to establish a business record

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Dikker - Redirect

1 exception, and the second is the relevance of documents that
2 purport to reflect a snapshot of the company's ownership
3 structure, first in 2007, the witness said, and the second in
4 2005.

5 THE COURT: Why do I care about the structure in
6 2005, '6, and '7?

7 MR. BERKOVICH: Because that was just about --
8 number one, it was just before the issues that are relevant in
9 this case came about and also demonstrates how TRI worked
10 because there were a lot of loose terms used, unfortunately by
11 every witness, both of them; but, in fact, TRI didn't own any
12 land, as explained by this witness. It was owned by other
13 companies, TRI subsidiaries.

14 Mr. Kislin accused, I think in his deposition and his
15 affidavit, Mr. Dikker of doing some shenanigans, opening many
16 companies for some nefarious reasons, and this shows that this
17 was legitimate practice for the company to have different plots
18 of land to be owned by different corporations and this shows
19 the structure. And it's in the interest of the decision-maker,
20 your Honor, to know that and to see that as example.

21 MR. DANNENBERG: That is not what these documents
22 show. They simply represent what the witness claims is a
23 snapshot of the ownership structure, one of them in 2005 and
24 one of them in 2007, both of which are at least one year prior
25 to the transactions that are the basis of this litigation.

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Dikker - Redirect

1 MR. BERKOVICH: Your Honor, we do not claim this to be
2 anything but snapshot, but I think it's very useful information
3 for the Court to have in understanding complexities of this
4 case as well as some allegations or accusations made by
5 Mr. Kislin. It is a snapshot, we absolutely agree. Yes, it's
6 not record of every transaction. I'm sure the companies
7 changed some names; some subsidiaries changed over time. We
8 don't claim otherwise.

9 MR. DANNENBERG: I will say, your Honor, that, just to
10 elaborate, there's a failure to establish a foundation for
11 business records exception to the hearsay rule.

12 MR. BERKOVICH: Your Honor, we're shorthanded on this
13 issue. We understand that. We don't have any other witnesses
14 from the foreign country. Unfortunately, we're limited in how
15 we can establish this kind of record. It was produced by
16 Mr. Dikker -- by Mr. Kislin, I'm sorry, in this lawsuit. And
17 Mr. Dikker is, obviously, more familiar with this document and
18 how it's prepared. And we don't have opportunity to bring
19 Ms. Runova, or anybody else, in this courtroom, so we are
20 obviously operating with some limitations, and we hope the
21 Court recognizes that.

22 THE COURT: So it was produced by your client, and
23 you're claiming it's not reliable; is that your position?

24 MR. DANNENBERG: I'll tell you exactly how it came
25 about. It was not produced from Mr. Kislin's own records. A

1 discovery request was made of all documents in certain
2 categories that were in the ownership, control, possession of
3 Mr. Kislin; and my office had some documents that had been
4 e-mailed to me, as Mr. Kislin's attorney, back in 2005 and
5 2007. And it fell within the scope of the discovery request,
6 so I produced it.

7 Mr. Kislin said at his deposition that he had no
8 knowledge of these. I assume that they had been drafted by
9 Runova or Mr. Dikker, but we're not saying that they're
10 relevant to any of the issues in this trial. He served a broad
11 discovery request, and we responded. That doesn't make them
12 admissible at trial, and counsel seems to be conceding the
13 point that they're not sufficient to establish a business
14 records exception because he says that he doesn't have the
15 witnesses here.

16 THE COURT: I'm not interested in whether they fit
17 within a business records exception or not. If this man says
18 that they accurately reflect the structure of the company at a
19 particular time, I don't need a business records exception.
20 This is an org chart. This is an organization chart.

21 MR. DANNENBERG: Yes, it is, your Honor.

22 THE COURT: I don't need every base of the business
23 record exception established to receive it. It's an org chart.
24 If he says the org chart is accurate at a particular point in
25 time, I have no reason to question that, particularly when it

1 came from you. The question is whether it's of any use, that's
2 my question. I will note that it reflects information that
3 both sides have submitted to me, in particular, the ownership
4 distribution among Dikker's company, Kislin's company, and
5 Parilis' company. Those percentages are reflected in these
6 charts exactly as they are in the parties' submissions to me.

7 The question is what else do they add, that's the
8 question, and it's not clear to me what they add. There are
9 many, many entities mentioned here. There hasn't been any
10 testimony about any of them. So I don't know how useful it is
11 for me to have an org chart that lists countless entities about
12 which there's been no evidence.

13 So that's the problem, Mr. Berkovich. I'm not sure
14 what you want me to make of this. There hasn't been any
15 testimony about most of the entities that are reflected in
16 these org charts, so what would you have me draw from them?

17 MR. BERKOVICH: If I may respond to that, your Honor.
18 And it's a late hour. I can ask witnesses with respect to
19 every company, but I asked the generic question with respect to
20 companies which are not three owners, and the witness can
21 testify that these companies are subsidiaries of TRI that own
22 separate plots of land. So that's evidence that's been
23 established. If you want, your Honor, to go over every one of
24 them, I could, but I think he gave the general answer.

25 THE COURT: How does that bear on the issues? You

1 know, I've tried to focus the lawyers' attention. I made an
2 effort at the very outset of this case to tell you what
3 mattered to me, and I was pretty clear about it. What matters
4 to me is whether there was an agreement between these two
5 gentlemen, an enforceable agreement; whether it was oral or
6 whether it was written; and what the terms of that agreement
7 were. Now, these org charts, Mr. Berkovich, I don't know how
8 they shed light on that issue.

9 MR. BERKOVICH: I agree with you hundred percent, your
10 Honor. These are provided essentially as a background
11 information regarding TRI and how it was structured. And
12 whether they would be useful to your Honor in any way in
13 rendering your decision, I'm obviously not going to argue at
14 this point. But your Honor may consider this without,
15 obviously, admitting them right now, but at least you have them
16 if they're admitted in evidence.

17 THE COURT: There's also the problem of time frame.
18 The relevant time frames, as I understand it, is 2008. They're
19 not from 2008. The witness has testified they're accurate as
20 of a moment in time, which is some moment in time in 2005 or
21 2006 and 2007. How they are different from the structure that
22 was in place in 2008, I have no idea.

23 MR. BERKOVICH: Could I ask the witness the question?
24 You want me to, your Honor?

25 THE COURT: You can conduct your examination in any

1 way you deem appropriate.

2 MR. BERKOVICH: This is the end of my examination, so
3 I'll just ask this question.

4 Q. Mr. Dikker, with respect to the two charts that you have in
5 front of you, which is Plaintiff's Exhibit B and C, are they in
6 any way similar to the charts that would have been made in 2008
7 and 2009?

8 A. In 2009, it would differ greatly. In 2008, at the time of
9 the transaction, if there were any differences, I couldn't say
10 for certain, but if there were, they would be fairly slight.

11 MR. BERKOVICH: Your Honor, I have no further
12 questions. I respectfully move to admit the two documents into
13 evidence.

14 MR. DANNENBERG: Our objection's noted, your Honor.

15 THE COURT: Well, based on the witness' representation
16 that the structure of the companies was not significantly
17 different in 2008, I will receive B and C.

18 MR. BERKOVICH: As I said, your Honor, I have no
19 further questions.

20 (Defendant's Exhibit B and C received in evidence)

21 THE COURT: All right. You can step down, Mr. Dikker.
22 Do you have any other evidence, Mr. Berkovich?

23 MR. BERKOVICH: Yes, your Honor. Well, not evidence,
24 but the last issue is the pages of Mr. Kislin's deposition
25 testimony. There were two depositions that defendant would

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Dikker - Redirect

1 like to introduce. We went through most of them -- all of
2 them, actually, with Mr. Dannenberg while your Honor was
3 handling the TRO. And we have reached an agreement on all
4 except for the two issues. So there's only two issues or two
5 particular pages that Mr. Dannenberg has objection to, and I
6 think that's the only argument we have.

7 THE COURT: Mr. Dannenberg, why don't you tell me your
8 objections.

9 THE INTERPRETER: I apologize, your Honor. May I be
10 excused?

11 THE COURT: Do you need the interpreter anymore?

12 MR. DANNENBERG: No.

13 MR. BERKOVICH: No, no.

14 THE COURT: Thank you.

15 THE INTERPRETER: Thank you, your Honor.

16 MR. DANNENBERG: I don't want to lose sight of the
17 agreement that Mr. Berkovich told you we just made. There are
18 some changes that need to be made to the recitation of pages
19 being submitted, page and line references by Mr. Berkovich.

20 MR. BERKOVICH: I made the changes. I made the
21 changes.

22 MR. DANNENBERG: Can you read them into the record.

23 MR. BERKOVICH: Your Honor, what I did is this: We
24 have a cover page to each deposition pages which lists only the
25 pages which we're seeking to be read in. So I made the changes

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Dikker - Redirect

1 consistent with our conference with Mr. Dannenberg, and the
2 only thing we have not done is those two other things. So
3 while there may be more pages than, in fact, should be read in,
4 the cover -- the cover governs the process. So it's whatever
5 the pages listed on the cover are.

6 THE COURT: You want to mark that as an exhibit,
7 Mr. Berkovich. It would Defense Exhibit --

8 MR. BERKOVICH: G and H.

9 THE COURT: Defense Exhibit -- these are excerpts from
10 Mr. Kislin's deposition, I assume?

11 MR. BERKOVICH: Yes, I'm sorry.

12 THE COURT: G is excerpts from his deposition on
13 April 29, 2014, and H is excerpts from his deposition on
14 June 23, 2015?

15 MR. BERKOVICH: That's correct, your Honor.

16 THE COURT: So you want to tell me what are the
17 remaining disputes.

18 MR. DANNENBERG: There's just two lines from the
19 second transcript, Exhibit H.

20 THE COURT: All right.

21 MR. DANNENBERG: The objection, it's the same
22 objection to both.

23 THE COURT: What page?

24 MR. DANNENBERG: Page 107.

25 THE COURT: What line?

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Dikker - Redirect

1 MR. DANNENBERG: Line 18 through 112, line 6, and also
2 page 114, line 16, through 121, line 4. These are --

3 THE COURT: I'm sorry. Give me those numbers again.
4 107 lines --

5 MR. DANNENBERG: 18 through 112, line 6.

6 THE COURT: Okay.

7 MR. DANNENBERG: And page 114, line 16, through 121,
8 line 4.

9 THE COURT: You want to tell me generally what your
10 objection is to the --

11 MR. DANNENBERG: These are a series of questions that
12 Mr. Berkovich asked Mr. Kislin to explain his understanding of
13 what was set forth in the complaint and what was meant by it,
14 what was set forth in the complaint, which may be fair game in
15 a deposition but, I respectfully submit, are not legitimate
16 questions and answers for trial.

17 THE COURT: I've just skimmed a number of these pages.
18 You're objecting to five pages here. I see many questions that
19 I don't perceive a problem with, so I guess we could go through
20 it line by line. But, for example, on the top of page 110,
21 there's a question:

22 "Q. Do you have any reason to believe that Mr. Dikker
23 personally owned any shares in Solid-Podmoskovny?

24 "A. Of course I did.

25 "Q. What's your basis for making this assertion?

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Dikker - Redirect

1 "A. He had -- well, maybe not him personally, but in his
2 company, his company had these shares."

3 Then it goes on from there. You're objecting to that
4 testimony?

5 MR. DANNENBERG: Mr. Berkovich and I discussed during
6 the break that all of these questions arose out of what was in
7 the complaint and questions asked by what was in the complaint.

8 THE COURT: It's no problem with him asking. I mean,
9 the complaint is a document filed by the plaintiff. Why is
10 that an inappropriate subject for examination?

11 MR. DANNENBERG: Not in a deposition, it's not
12 inappropriate.

13 THE COURT: Well, it's not inappropriate at trial
14 either. And if we had a jury here and Mr. Berkovich wanted to
15 question Mr. Kislin line by line about every statement in his
16 complaint, he absolutely would be permitted to do that because
17 everything in the complaint is an admission, and it's proper
18 ground for examination. Whether it's meaningful or not, I
19 don't know, but that's not a basis for an objection that he
20 can't be questioned about his complaint. Of course he can be
21 questioned about his complaint. So if that's the basis for
22 your objection, that objection's overruled. If you have
23 another basis, I'm happy to hear it.

24 MR. DANNENBERG: That's my only basis, your Honor.

25 THE COURT: And that goes to both sets of excerpts?

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1 MR. DANNENBERG: That's the entire --

2 THE COURT: All right. The objection's overruled, and
3 Defense Exhibits G and H are received.

4 (Defendant's Exhibit G and H received in evidence)

5 THE COURT: Do you have any other evidence,
6 Mr. Berkovich?

7 MR. BERKOVICH: No, your Honor.

8 THE COURT: Mr. Dannenberg, do you have any other
9 evidence?

10 MR. DANNENBERG: No, your Honor.

11 THE COURT: Let's turn to how we're going to proceed.
12 To say I was surprised by the testimony in the trial would be a
13 severe understatement. The submissions I received from the
14 lawyers in no way prepared me for the proof. I believe that I
15 need a complete redo as to proposed findings of fact,
16 conclusions of law.

17 With respect to the legal issues, those weren't
18 properly addressed in the submissions in any event. So what do
19 I mean by that? There are two claims that were on trial here,
20 breach of contract, fraudulent misrepresentation. So as to the
21 law, it's necessary to lay out what the elements of those
22 causes of action are under New York law, given the parties'
23 agreement that their dispute is governed by New York law. So I
24 need an analysis of the elements of each of those causes of
25 action under New York law and how the proof either does or does

1 not satisfy those elements.

2 With respect to the breach of contract claim, I must
3 confess to you that at this point I'm not entirely sure what
4 contract it is we're talking about. I had come to the trial
5 believing that the plaintiff's theory was that there was a
6 handshake agreement that Mr. Dikker would pay Mr. Kislin
7 \$20 million for his interest in TRI; and, in fact, Mr. Kislin
8 testified that there was no more than an oral agreement; that
9 there were no documents. In fact, he said that he had no
10 reason to do a written agreement with Mr. Dikker. Mr. Dikker,
11 in complete contradiction to that, testified about a whole
12 series of agreements. There are so many I couldn't even tell
13 you how many. It was a lot. It was a lot of agreements.

14 In terms of proposed findings of fact, conclusions of
15 law, I believe we're starting, I won't say with a blank slate,
16 but let's just say the proof has varied quite a bit from what I
17 anticipated based on pretrial submissions. So I'm happy to
18 hear what the lawyers think, but my inclination would be to
19 require new proposed findings of fact and conclusions of law.
20 And I want to emphasize that with respect to the legal portion
21 of the submission, it has to address each element of these
22 causes of action and explain, on plaintiff's side, how each
23 element is satisfied and as to Mr. Berkovich's side, how it is
24 not satisfied. That's what I require.

25 If plaintiff is contending that there was an oral

1 agreement, and I don't know whether that's what plaintiff is
2 contending now, but if plaintiff was going to go down the road
3 of arguing there was an oral agreement between Mr. Kislin and
4 Mr. Dikker, then, obviously, I would need an analysis of New
5 York law on the question of the enforceability of an oral
6 agreement involving the property that is at issue here.

7 In any event, let me hear from the lawyers what they
8 think is appropriate at this point. Mr. Dannenberg.

9 MR. DANNENBERG: I was surprised by some of the
10 testimony myself, your Honor, from the defendant.

11 THE COURT: By the way, I'm not suggesting I'm going
12 to adopt what Mr. Dikker said, but I am suggesting I was
13 surprised by his testimony.

14 MR. DANNENBERG: Right.

15 THE COURT: It has changed the playing field
16 substantially. But, anyway, what do you think about
17 supplemental submissions, post-trial submissions?

18 MR. DANNENBERG: I think it's absolutely necessary.

19 THE COURT: Mr. Berkovich?

20 MR. BERKOVICH: I absolutely agree with your Honor.

21 THE COURT: All right.

22 MR. BERKOVICH: It is, correct, your Honor, you're
23 totally right, if you look at the pretrial submissions, in part
24 probably because the position didn't go into the many areas
25 where we went in our direct and then cross and redirect,

1 clearly, there's much more to this case than what was presented
2 to your Honor initially, absolutely, your Honor.

3 THE COURT: Now, another issue which I'm going to ask
4 you to talk about between yourselves, at least initially, is
5 there were stipulations of fact here that the parties entered
6 into before the trial. I haven't gone back over them to see
7 whether they all still make sense in light of the testimony.
8 Maybe they do. I don't know. But if either of you are
9 troubled by the stipulations of fact in light of the evidence
10 that we heard, I would ask you to talk about it between
11 yourselves in the first instance. I haven't been back over the
12 stipulated facts to see whether they still make sense or not.
13 Maybe they do. I hope they do. But if they don't, that raises
14 an issue, too, because they were stipulated to before the trial
15 started.

16 Schedule, I guess schedule and also sequence. It's
17 plaintiff's case, so it seems to me that plaintiff should go
18 first and present plaintiff's proposed findings of fact and
19 conclusions of law supported by the legal analysis I described.

20 Mr. Dannenberg, how long would you want to put in your
21 papers?

22 MR. DANNENBERG: Well, I would like to be able to get
23 the transcript.

24 THE COURT: Yes, that's a necessity.

25 MR. DANNENBERG: Yes. One of the reporters had

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1 indicated, Patricia, previous reporter had indicated that she
2 had a vacation later in April. The normal turnaround time, as
3 I understand it, is 30 days.

4 THE COURT: All right. Accepting that as true, today
5 is April 6, so that would bring us to May 9.

6 MR. DANNENBERG: Can I suggest end of May?

7 THE COURT: Sure. So Memorial Day is the 30th. You
8 want to bump it to June 1 or do you want to do it earlier?

9 MR. DANNENBERG: Last business day of May.

10 THE COURT: Last business day of May is May 31.

11 MR. DANNENBERG: Okay.

12 THE COURT: Plaintiff's papers are due May 31.

13 Mr. Berkovich.

14 MR. BERKOVICH: Your Honor, having 30 days to respond
15 would be welcome.

16 THE COURT: That would bring us to --

17 MR. BERKOVICH: Just before the holidays, I presume.

18 THE COURT: June 30, yes.

19 Mr. Dannenberg, do you want a reply?

20 MR. DANNENBERG: I would like an opportunity to reply.
21 I would request two weeks.

22 THE COURT: That would bring us to July 14.

23 MR. BERKOVICH: Your Honor, just for clarification,
24 your Honor is not requiring us to submit a new memorandum of
25 law, just new findings of facts and conclusions of law; is that

1 correct? Just make sure what you want to see.

2 THE COURT: What I'm saying to you is that I did not
3 find the briefs that were submitted adequate. So, yes, I'm
4 telling you that I want more legal analysis focused on the two
5 causes of action that we went to trial on and explaining, in
6 your case, how the elements of breach of contract and
7 fraudulent misrepresentation have not been demonstrated by the
8 proof in the case. So, yes, I want you to file a new brief
9 that is focused on, first of all, the elements of the causes of
10 action we went to trial on but also takes into account what the
11 evidence was and how the evidence, from your point of view,
12 does not make out the elements of breach of contract and
13 fraudulent misrepresentation.

14 Let me ask you this: Has there ever been any effort
15 to settle this case?

16 MR. BERKOVICH: We discussed it with Mr. Dannenberg,
17 as required, but we discussed it. In any event, we know each
18 other outside of this case. We have some disputes, but also
19 had some non-dispute relationship. Remember, these parties
20 have been involved in business for many years. So we had a
21 friendly discussion with Mr. Dannenberg. It's just the parties
22 are so far apart. They require \$4 million. My client doesn't
23 have the money; doesn't know if he owes it. We had discussion,
24 but nothing came of them.

25 THE COURT: Go ahead, Mr. Dannenberg. You want to say

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1 something.

2 MR. DANNENBERG: It wasn't just Mr. Berkovich and me.
3 The two parties met separately from us on their own and made an
4 effort unsuccessfully.

5 THE COURT: Let me say this: I don't know the entire
6 relationship between these two men, but I suspect they were in
7 business for a significant period of time. There's evidence
8 here that the parties came to an understanding that
9 Mr. Kislin's interest in the business was worth as much as
10 \$20 million, if not more. The parties disagree as to what
11 Mr. Dikker agreed to do in terms of buying out Mr. Kislin. But
12 according to Mr. Dikker, what he agreed to do was attempt to
13 find a buyer that could pay \$20 million for Mr. Kislin's
14 interest and, according to Mr. Dikker, he found such a buyer,
15 the Russian pension fund that I refer to as Blago.

16 Perhaps, as the result of a problem that neither man
17 anticipated, it turned out that there was an obstacle to
18 obtaining the full \$20 million from Blago, and that obstacle,
19 the evidence suggests, was in the form of a man named Semernin
20 who believed that TRI, the venture in which Mr. Dikker and
21 Mr. Kislin were partners, owed his management company
22 \$4 million. We heard testimony, both today and yesterday,
23 about that debt. And from Mr. Kislin's point of view, he
24 doesn't believe he should have borne the brunt of that
25 \$4 million debt. And what Mr. Dikker thinks, I don't know, but

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1 there is some evidence that he made some efforts to try to get
2 Mr. Kislin that \$4 million. And there was also testimony that
3 the debt, the \$4 million, the evidence wasn't entirely crystal
4 clear on this, but there was evidence that both Mr. Dikker and
5 Mr. Kislin took on some sort of obligation with respect to that
6 debt. But the way it worked out, it may be the case that
7 Mr. Kislin bore the brunt of that \$4 million debt when perhaps
8 it was a debt that should have been shared between the two. I
9 don't know.

10 What I do wonder about is given the long relationship
11 between these two men, the fact that they made a lot of money
12 together, the fact that they both agreed at the outset that
13 Mr. Kislin's interest was worth at least \$20 million, and the
14 fact that Mr. Kislin didn't get \$20 million, he got 16, whether
15 it might be reasonable to reach some kind of agreement
16 somewhere in the middle and put this matter behind you. I'm
17 not going to be able to do that. If I were an arbitrator, you
18 know, arbitrators have a lot more freedom to do what they think
19 is fair, in part because unless the parties require a reasoned
20 decision, arbitrators are not required to give one. They just
21 give a number. I don't have that luxury. So while an
22 arbitrator might find a place in the middle between the two
23 sides here, I suspect it's highly unlikely that that's where
24 I'm going to wind up. It's either going to be Mr. Dikker owes
25 Mr. Kislin \$4 million or he doesn't owe him anything.

1 So I would ask all of you to consider whether a
2 resolution that involves some number between the middle of zero
3 and \$4 million might be sensible in light of all the
4 circumstances, the long relationship between the people
5 involved, the fact that they made a lot of money together, and
6 whether it's time to bury the hatchet on this and move on.
7 Because you know, whatever happens here, whatever I do, one
8 side or the other will likely appeal; and it will go on for
9 another year or two years. I'm not sure that makes any sense
10 in this case. So I'd ask you to think about that.

11 If at any point you feel like the involvement of a
12 neutral third party would be helpful, obviously, I can refer
13 the case to a magistrate judge for that purpose. But I hope
14 you'll make a serious effort to discuss the dispute between
15 yourselves and try to reach a result that can put the matter
16 behind you now. That's my recommendation.

17 All right. Mr. Dannenberg, anything else?

18 MR. DANNENBERG: No, your Honor.

19 THE COURT: Mr. Berkovich, anything else?

20 MR. BERKOVICH: No, your Honor.

21 THE COURT: All right. We're adjourned.

22 (Adjourned)

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